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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 241

BULOVA WATCH COMPANY, INC., PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 15, 1960
CERTIORARI GRANTED OCTOBER 17, 1960

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE UNITED STATES COURT OF CLAIMS

Docket No. .....

BULOVA WATCH COMPANY, INC., Plaintiff,

v.

UNITED STATES, Defendant.

PETITION—Filed November 23, 1953

Action to recover overpayment of income, declared value excess profits tax and excess profits taxes erroneously and illegally assessed and collected for the fiscal years ended March 31, 1942 to March 31, 1946 inclusive.

1. Jurisdiction rests in this court in accordance with provisions of Title 28, U. S. Code, Section 2501, and is also authorized by Section 3772(a)(1) and (2) of the U. S. Internal Revenue Code.

2. This civil action is to recover Federal declared value excess profits tax and excess profits tax together with interest thereon erroneously and illegally assessed and paid by plaintiff for the fiscal year ended March 31, 1942; to recover Federal income taxes for the fiscal year ended March 31, 1943 together with interest thereon erroneously and illegally assessed and paid; and, in addition, to recover Federal excess profits taxes together with interest thereon previously assessed and paid by plaintiff for the fiscal years [fol. 2] ended March 31, 1944, March 31, 1945 and March 31, 1946. The exact amounts will be shown hereinafter.

3. The plaintiff is a domestic corporation duly organized under the laws of the State of New York in June 1911. It maintains its principal place of business at Bulova Park, Flushing, L. I., N. Y. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, N. Y.

4. The plaintiff maintains its books and records on an accrual basis and files its returns on a fiscal year basis ending March 31st.

5. The plaintiff duly filed its Federal tax returns reporting the following net incomes upon which tax liabilities were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York.

Year Ended	Declared Value Excess Profits Tax		Excess Profits Tax		Income Tax	
	Net Income	Tax	Net Income	Tax	Net Income	Tax
3/31/1942	$1,837,146.52	$ 6,972.67	$1,440,173.85	$ 315,118.87	$1,183,554.98	$366,652.05
3/31/1943	1,089,176.31	none	830,176.31	none	867,676.31	347,070.52
3/31/1944	2,329,572.66	24,500.70	2,060,071.96	1,008,403.24	990,345.43*	396,635.44
3/31/1945	3,968,680.86	81,785.94	3,616,894.92	2,292,416.49	946,966.24	378,786.50
3/31/1946	4,657,218.74	5,508.94	3,976,709.80	1,977,783.60	1,007,716.24**	868,407.02

* amount applicable for 275 days $ 990,345.83
amount applicable for 91 days $ 995,345.83

** amount applicable for 275 days $1,007,716.24
amount applicable for 90 days $4,077,959.80
} Exclusive of $730,449.82 Capital gains

6. Thereafter the plaintiff's tax returns were examined by the Commissioner of Internal Revenue for the fiscal years ended March 31, 1942 through March 31, 1946 and the net incomes and tax liabilities were revised as follows:

[fol. 3]

Year Ended	Report Date of	Declared Value Excess Profits Tax		Excess Profits Tax		Income Tax	
		Net Income	Tax	Net Income	Tax	Net Income	Tax
3/31/42	9/23/43	$1,843,818.17	$ 7,413.00	$1,446,405.17	$ 318,857.67	$1,186,047.50	$367,424.73
3/31/43	5/14/47	1,151,229.33	none	901,229.33	none	938,729.33	375,491.73
3/31/44	5/14/47	2,728,441.32	50,826.03	2,432,615.29	1,395,887.91	938,216.24*	375,783.77
3/31/45	7/13/48	3,924,066.31	78,841.38	3,575,224.93	2,262,414.10	946,966.24	378,786.50
3/31/46	7/27/50	4,685,135.25	7,351.43	4,002,783.82	1,994,579.92	1,007,716.24**	870,850.11

* amount applicable for 275 days $ 938,216.24
amount applicable for 91 days $ 943,216.24

** amount applicable for 275 days $1,007,716.24
amount applicable for 90 days $4,104,068.82
} Exclusive of $730,449.82 Capital Gains

7. The additional taxes together with interest thereon resulting from the above determinations were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York.

Thereafter the plaintiff filed timely claims for refund of Federal taxes on Forms 843 with the Collector of Internal Revenue for the Third District of New York, as follows:

AMOUNT OF REFUND CLAIMED

Year Ended	Date Claim Filed	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
3/31/1942	6/14/1945	$7,413.00	$ 318,857.67	—
3/31/1943	6/14/1945	—	—	$90,086.29
3/31/1944	6/14/1945	—	1,008,403.24	—
3/31/1945	8/ 9/1948	—	103,754.75	—
3/31/1946	8/ 9/1948	—	92,433.65	—

8. Notice of disallowance of plaintiff's claim for refund for the fiscal year ended March 31, 1945 was mailed to the plaintiff on April 15, 1953 in accordance with provisions of Section 3772(a)-2 of the Internal Revenue Code. No action has been taken on plaintiff's claims for refund for the fiscal years ended March 31, 1942, 1943, 1944 and 1946. Less [fol. 4] than two years have elapsed since the disallowance of the claim for refund for the year ended March 31, 1945 and more than six months have elapsed since the filing of the claims for refund for the years ended March 31, 1942, 1943, 1944 and 1946.

9. The basis stated in the claim for refund of declared value excess profits tax for the fiscal year ended March 31, 1942 and on which plaintiff relies for the allowance of its claim for refund are as follows:

The declared value excess profits net income of $1,843,818.17 for the fiscal year ended March 31, 1942 as determined by the Commissioner of Internal Revenue is overstated by $223,119.13, the correct declared value excess profits net income being $1,620,699.04. The difference of $223,119.13 is arrived at as follows:

a. adjustment of erroneous and excessive reserve for bad debts not taxable as income under Sec. 22 of the Internal Revenue Code	$204,722.75*
b. depreciation of cost of installing Holmes Electric Protective Service over 5-year lease (1/5 of $5,204.92)	1,040.98
c. additional interest allowable for fiscal year ended March 31, 1942, by reason of applying provisions of Section 734 of the Internal Revenue Code to fiscal year ended March 31, 1941	17,355.40
Total adjustments	$223,119.13

* Stated in claim at $144,245.27 but listed in tax return at $204,722.75.

The details pertaining to each of these adjustments are given hereinafter.

[fol. 5] 10. The bases stated in the claim for refund of excess profits tax paid for the fiscal year ended March 31, 1942 and on which plaintiff relies are the same as set forth under paragraph 9 for the purpose of determining declared value excess profits net income and in addition, plaintiff claimed an increased excess profits credit of $82,268.77, arising from adjustments to base period excess profits net income, other than those arising under Section 722 of the Internal Revenue Code, as well as a claim for an unused excess profits credit carryback from the fiscal year ended March 31, 1943 of $367,309.97 exclusive of any additional claimed carryback credit resulting from Section 722 relief. Of $367,309.97, only $315,121.21 is applicable to year ended March 31, 1942.

The additional excess profits credit of $82,268.77 is claimed pursuant to Section 713 of the Internal Revenue Code.

The unused Excess Profits Credit Carryback is claimed pursuant to Section 710(c)(3)(A) and (4) of the Internal Revenue Code, which provides:

"(3) Amount of unused excess profits credit carryback and carryover.

(A) Unused excess profits credit carryback. If for any taxable year beginning after December 31, 1941, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carryback for each of the two preceding taxable years, except that the carryback in the case of the first preceding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the second preceding taxable year computed for such taxable year (i) by determining the unused excess profits credit ad- [fol. 6] justment without regard to such unused excess profits credit, and (ii) without the deduction of the specific exemption provided in subsection (b)(1).

"(4) No carryback to year prior to 1941.

As used in this subsection, the term 'preceding taxable year' and the term 'preceding taxable years' do not include any taxable year beginning prior to January 1, 1941."

11. Plaintiff in addition to reasons set forth under paragraph 9 also claimed that the correction of the reserve for bad debts for the fiscal year ended March 31, 1942 to eliminate erroneous and excessive provisions for bad debts for the base period years commencing prior to January 1, 1940 are excludible from excess profits net income under the provisions of Section 711(a)(1)(E) of the Internal Revenue Code applicable to years involved in these proceedings, which provides:

"(a) The excess profits net income for any taxable year beginning after December 31, 1939 shall be the

normal tax net income as defined in Section 13(a)2, for such year except that the following adjustments shall be made:

"E" Recoveries of bad debts.

There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940;"

12. Plaintiff claimed its excess profits credit for the fiscal year ended March 31, 1942 exclusive of additional credit allowable under provisions of Section 722 of the [fol. 7] Internal Revenue Code was $915,577.83 computed as follows:

	3/31/1937	3/31/1938	3/31/1939	3/31/[illegible]
Excess profits net income determined by Commissioner of Internal Revenue	$1,125,914.09	$ 949,465.76	$488,994.00	$ 944,[illegible]
Add:				
(a) Excessive charge off of Provision for Bad Debts	126,889.72	205,595.24	(136,931.37)	137,8[illegible]
(b) Legal Expense on Retirement of Preferred Stock	7,810,07	—	—	—
(c) Installation Cost of Holmes Electric Protective Service erroneously deducted	—	—	—	5,[illegible]
Corrected Excess Profit Net Income	$1,260,613.88	$1,155,061.00	$352,062.63	$1,087,[illegible]
Average Base Period Net Income				$ 963,[illegible]
Excess Profits Credit allowable (95%)				$ 915,[illegible]

13. The bases cited by plaintiff in its claim for refund of income tax for the fiscal year ended March 31, 1943 and on which plaintiff relies for allowance of its claim are—

(a) adjustment of erroneous and excessive reserve for bad debts not taxable as income under Section 22 of the Internal Revenue Code	$224,174.75
(b) depreciation of Holmes Electric Protective Service Equipment	$ 1,040.98
Total decrease in net income	$225,215.73

14. The bases cited by plaintiff in its claims for refund of excess profits tax for the fiscal years ended March 31, [fol. 8] 1944, 1945 and 1946 are (a) additional excess profits credit of $143,490.42, exclusive of any additional credit allowable pursuant to Section 722 of the Internal Revenue Code and (b) reduction in excess profits net income of $1,040.98 for the fiscal year ended March 31, 1944 and $520.49 for the fiscal year ended March 31, 1945, representing depreciation of Holmes Electric Protective Service equipment.

15. In addition, for the fiscal year ended March 31, 1944 the plaintiff claimed an unused excess profits credit carryover from the fiscal year ended March 31, 1943. The unused excess profits credit for the year ended March 31, 1943 to be used as a carryback and carryforward is $367,309.97, as computed in paragraph 26. Of this amount $315,121.21 is applicable to the year ended March 31, 1942 as claimed in paragraph 10, and $52,188.76 is applicable to year ended March 31, 1944, pursuant to Section 710 (c)(3)(B) which provides:

> "(B) Unused excess profits credit carryover. If for any taxable year beginning after December 31, 1939, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carryover for each of the two succeeding taxable years, . . .

(1) For the purposes of the preceding sentence, the unused excess profits credit for any taxable year beginning after December 31, 1941, shall first be reduced by the sum of the adjusted excess profits net income for each of the two preceding taxable years. . . .

16. The plaintiff claims deduction for bad debts on the so-called reserve for bad debts method. This latter method was adopted during the fiscal year ended March 31, 1935 [fol. 9] with the consent of the Commissioner of Internal Revenue. The amounts charged off on plaintiff's books, the actual bad debts sustained, the amount of bad debts claimed as deductions on tax returns, the deduction for bad debts on the reserve method allowed for tax purposes by the Commissioner of Internal Revenue, the cumulative reserve for bad debts per books and for tax purposes, and the differences in the cumulative Reserve for Bad Debts for the fiscal years ended March 31, 1935 through 1941, are as follows:

3/31/	Provision for Bad Debts per Books	Actual Bad Debts Sustained	Tax Deduction Claimed	Tax Deduction Allowed	Cumulative Reserves for Bad Debts Per Books	Cumulative Reserves for Bad Debts Tax Basis	Difference in Reserve for Bad Debts
1935	$333,716.44	$58,952.87	$333,716.44	$291,135.23	$274,763.57	$232,182.36	$ 42,581.21
1936	169,023.53	17,223.20	169,023.53	116,103.70	426,563.90	331,062.86	95,501.04
1937	198,859.94	13,047.00	198,859.94	126,889.72	612,376.84	444,905.58	167,471.26
1938	236,434.28	44,797.60	236,434.28	205,595.24	804,013.52	605,703.22	198,310.30
1939	(107,268.73)	50,202.09	(157,470.82)	(136,931.37)	646,542.70	418,569.76	227,972.94
1940	220,187.54	61,675.87	158,511.67	137,836.23	805,054.37	494,730.12	310,324.25
1941	(22,571.08)	42,130.13	113,069.64	—0—	740,353.16	452,599.99	287,753.17
	( ) Debit to Reserve		( ) Income				

17. Plaintiff's sales, trading bad debts and ratio of trading bad debts to sales during fiscal years ended March 31, 1935 through March 31, 1946 were:

	Sales	Trading Bad Debts (net)	Ratio
3/31/1935	$ 5,638,323	$ 58,952	1.046%
3/31/1936	7,742,881	17,223	.222%
3/31/1937	11,006,767	13,047	.119%
3/31/1938	15,555,603	28,988	.186%
3/31/1939	10,704,185	50,202	.469%
3/31/1940	14,579,569	61,676	.423%
3/31/1941	18,032,864	42,130	.234%
3/31/1942	19,389,557	60,477	.312%
3/31/1943	19,980,902	(3,367)	
3/31/1944	28,753,547	(10,880)	
3/31/1945	35,083,345	(8,921)	
3/31/1946	35,896,165	(4,961)	

( ) Recovery of Bad Debts

[fol. 10] 18. Plaintiff's notes and accounts receivable at the close of the fiscal years ended March 31, 1935 through March 31, 1945, the trading bad debts sustained in the respective subsequent years, the ratio of trading bad debts to accounts and notes receivables and the percent of accounts and notes receivable used in computing the reserve for bad debts for tax purposes were:

	Notes and Accounts Receivable	Trading Bad Debts	Ratio of Bad Debts to Receivables	Rate Allowed for Tax Purposes
3/31/1935	$2,329,082	$17,223	.7394%	12½%
3/31/1936	3,490,119	13,047	.3738%	10%
3/31/1937	4,759,016	28,988	.6091%	10%
3/31/1938	6,814,968	50,202	.7366%	10%
3/31/1939	5,445,655	61,676	1.1326%	10%
3/31/1940	6,824,017	42,130	.6174%	10%
3/31/1941	7,954,122	60,477	.7603%	None
3/31/1942	5,395,679	(3,367)	—	—
3/31/1943	2,760,078	(10,880)	—	—
3/31/1944	2,900,565	(8,921)	—	—
3/31/1945	2,543,611	(4,961)	—	—

() Recovery.

19. Plaintiff's reserve for bad debts (tax basis) at April 1, 1936, the beginning of plaintiff's base period, of $331,-062.86 was sufficient to absorb all the trading bad debts incurred over the next ten years, which amounted to $228,391. No deductions for additions to the reserve for bad

debts were required or allowable in the years ended March 31, 1937 through March 31, 1940, pursuant to Section 23(k) of Revenue Acts of 1936 and 1938, which provided:

"Section 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions: * * *

(k) Bad Debts.—Debts ascertained to be worthless and charged off within the taxable year (or, in [fol. 11] the discretion of the Commissioner, a reasonable addition to the reserve for bad debts); . . . "

20. Plaintiff incurred legal fees of $7,810.07 to Cravath, deGersdorff, Swaine & Moore in connection with retirement of plaintiff's preferred stock in the fiscal year ended March 31, 1937. Plaintiff erroneously deducted said legal expense in its tax return, which was allowed by Commissioner of Internal Revenue. This item should have been disallowed in accordance with Section 24 of the Revenue Act of 1936.

21. During the fiscal year ended March 31, 1940, plaintiff installed Holmes Electric Protective Service at its principal office, 630 Fifth Avenue, New York 20, N. Y., at a cost of $5,204.92. Plaintiff erroneously deducted such cost in its tax return which deduction was allowed by the Commissioner of Internal Revenue. Plaintiff claims such cost of $5,204.92 should have been capitalized and depreciated pro rata over a five-year lease, pursuant to Section 19.24-2 of Regulations 103, which provides:

"Section 19.24-2. Capital Expenditures.

Amounts paid for increasing the capital value or for making good the depreciation (for which a deduction has been made) of property are not deductible from gross income. * * *."

22. The allowance of plaintiff's claim set forth in Paragraph 12 entitles Commissioner of Internal Revenue to an offset for additional income and undistributed profits taxes and interest thereon to June 15, 1941, under Section 734 of the Internal Revenue Code. Said interest is an allowable

deduction in computing excess profits net income and declared value excess profits net income for the fiscal year [fol. 12] ended March 31, 1942, pursuant to Section 734(e)(2), which provides:

> "If an adjustment under this section results in a net increase, or more than one adjustment results in an aggregate net increase, the portion of such net increase or aggregate net increase, as the case may be, which represents interest shall be allowed as a deduction in computing net income for the taxable year in which falls the date prescribed for the payment of the tax under this subchapter."

23. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in years ended March 31, 1941 through March 31, 1946.

24. Plaintiff reported as income in its income tax, declared value excess profits tax and excess profits tax returns for year ended March 31, 1942, the amount of $204,722.75, representing "Reduction in Reserve for Doubtful Accounts". This Reduction in the Reserve for Doubtful Accounts comprised the following:

Bad Debts sustained	$ 60,477.48
Additional debit to reserve	164,920.71
	$225,398.19
Less: Amount credited to surplus	20,675.44
Amount included in income	$204,722.75

25. Plaintiff reported as income in its return for the year ended March 31, 1943, the amount of $227,541.66, representing "Reduction in Reserve for Doubtful Ac- [fol. 13] counts". This Reduction in Reserve for Doubtful Accounts comprised the following:

Debit to Reserve for Bad Debts	$246,835.98
Less: Credit to Surplus	22,661.23
	$224,174.75
Add: Recovery for Bad Debts	3,366.91
Amount included in income	$227,541.66

26. Unused excess profits credit carryback and carryover of $367,309.97 from fiscal year ended March 31, 1943 is made up as follows:

Excess Profits Net Income previously determined by Commissioner		$ 901,229.33
Less: "Reduction in Reserve for Doubtful Accounts" non-taxable	$227,541.66	
Depreciation of Holmes Electric Protective Service costs	1,040.98	228,582.64
		$ 672,646.69
Excess Profits Credit claimed—determined in Par. 27		1,039,956.66
Unused Excess Profits Credit Carryback		$ 367,309.97

27. Plaintiff is entitled to an excess profits credit of $1,039,956.66 for the fiscal years ended March 31, 1943 through March 31, 1946 computed as follows:

[fol. 14]

	March 31, 1937	March 31, 1938	March 31, 1939	March 31, 194
Correct Excess Profits Net Income—Par. 12	$1,260,613.86	$1,155,061.00	$352,062.63	$1,087,33
Aggregate of Base Period Income				3,855,77
Increase under Section 713 (e)				523,69
Average Base Period Net Income				$4,378,76
Excess Profits Credit allowable (95%)				$1,094,69
				$1,039,95

28. Wherefore, plaintiff demands judgment against the defendant in the amounts set forth below, together with interest thereon, and costs.

	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
March 31, 1942	$7,413.00	$318,857.67	
March 31, 1943			$91,433.05
March 31, 1944		118,687.65	
March 31, 1945		103,309.82	
March 31, 1946		92,433.52	
	$7,413.00	$633,288.66	$91,433.05

29. Plaintiff is the owner of the claims for refund and no part of said claims has been assigned.

Bernard Weiss, Attorney for Plaintiff, 136 East 57th Street, New York 22, N. Y.

[fol. 15]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ANSWER—Filed March 18, 1954

The defendant, United States, by its attorney, H. Brian Holland, Assistant Attorney General, answering the allegations in plaintiff's petition herein:

I

Denies the allegations of such petition not admitted, qualified or otherwise specifically referred to below.

II

Further answering the petition, defendant—

1. Admits the allegations of Paragraph 1.

2. Admits the allegations of Paragraph 2, except denies that the income taxes, declared value excess profits taxes,

and excess profits taxes were erroneously and illegally assessed and collected.

[fol. 16] 3. Admits the allegations of Paragraphs 3 to 8, inclusive.

9. Denies the allegations of Paragraph 9.

10. Denies the allegations of Paragraph 10.

11. Denies the allegations of Paragraph 11.

12. Denies the allegations of Paragraph 12.

13. Denies the allegations of Paragraph 13.

14. Denies the allegations of Paragraph 14.

15. Denies the allegations of Paragraph 15.

16. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, except admits that plaintiff claims deduction for bad debts on the reserve method which it adopted during the fiscal year ended March 31, 1935, with the consent of the Commissioner of Internal Revenue.

17. Denies the allegations of Paragraph 17 for lack of information sufficient to form a belief as to the truth thereof.

18. Denies the allegations of Paragraph 18 for lack of information sufficient to form a belief as to the truth thereof.

19. Denies the allegations of Paragraph 19 for lack of information sufficient to form a belief as to the truth thereof.

20. Denies the allegations of Paragraph 20.

21. Denies the allegations of Paragraph 21, except admits that the installation cost of $5,204.92 for the Holmes Electric Protective Service was claimed as a deduction by plaintiff and allowed as such by the Commissioner of Internal Revenue.

22. Denies the allegations of Paragraph 22.

[fol. 17] 23. Admits the allegations of Paragraph 23.

24. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, except admits that plaintiff reported as income in its returns for the fiscal year ended March 31, 1942, the amount of $204,722.75 as representing a reduction in reserve for doubtful accounts.

25. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, except admits that plaintiff reported as income in its returns for the fiscal year ended March 31, 1943, the amount of $227,541.66 as representing a reduction in reserve for doubtful accounts.

26. Denies the allegations of Paragraph 26.

27. Denies the allegations of Paragraph 27.

29. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29.

Wherefore, defendant, having fully answered plaintiff's petition, prays that it take nothing in this suit; that plaintiff's petition be dismissed; and that defendant be allowed its costs herein.

H. Brian Holland, Assistant Attorney General.

[fol. 18]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

STIPULATION OF FACTS—Filed May 7, 1956

It is stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts hereinafter stated are true and correct, provided however, that this stipulation shall be without prejudice to the rights of either party to introduce other and further evidence not inconsistent with the facts herein stipulated as true; and

provided further, that said facts are stipulated subject to objections by either party as to materiality or relevancy.

1. Plaintiff is a corporation duly organized under the laws of the State of New York. It maintains its principal place of business at Bulova Park, Flushing, L. I., New York. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, New York.

2. At all times pertinent hereto, the plaintiff maintained its books and records on an accrual basis of accounting and filed its returns on a fiscal year basis ending March 31.

[fol. 19] 3. Plaintiff duly filed its federal tax returns for the fiscal years ending March 31, 1941, through March 31, 1946, inclusive, reporting net incomes on which tax liabilities were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York. True copies of said returns are attached hereto as Exhibits 1, 2, 3, 4, 5 and 6.

4. Plaintiff and its subsidiaries filed timely applications for relief on Form 991, under Section 722 of the Internal Revenue Code of 1939, for the fiscal years ended March 31, 1941, March 31, 1942, and March 31, 1943. Taxpayer claimed that its excess profits tax, computed without the benefits of Section 722 of the Internal Revenue Code as amended, was excessive and discriminatory because the average base period net income credit did not provide a proper or adequate measure of taxpayer's normal earnings under subdivisions 1 to 5, inclusive, of subsection (b) of Section 722. Statutory notices of disallowance of taxpayer's applications for relief under Section 722 of the Internal Revenue Code for the fiscal years ended March 31, 1941, March 31, 1942, and March 31, 1943, were issued on February 2, 1945, a true copy of which is attached hereto as Exhibit 7. No petitions for review of said disallowances were filed with the Tax Court.

5. Plaintiff filed timely applications for relief on Form 991, under Section 722 of the Internal Revenue Code of 1939, for the fiscal years ended March 31, 1944, March 31, 1945, and March 31, 1946. The taxpayer claimed that its

[fol. 20] excess profits tax, computed without the benefits of Section 722 of the Internal Revenue Code, as amended, was excessive and discriminatory because the average base period net income credit did not provide a proper or adequate measure of taxpayer's normal earnings under subdivisions 2, 4 and 5 of subsection (b) of Section 722. By letter dated September 25, 1952, the District Director of Internal Revenue advised taxpayer that its applications for relief filed on Forms 991 had been denied and that taxpayer was not entitled to a constructive average base period net income. Thereafter, the determination of the District Director was approved by the Excess Profits Tax Council. On December 15, 1953, taxpayer was given statutory notice of disallowance of its application for relief made on Form 991 for the fiscal year ended March 31, 1945. On March 12, 1954, taxpayer filed a petition with the Tax Court of the United States for a redetermination of its excess profits tax liability. A true copy of the petition filed with the Tax Court, and exhibits thereto, is attached hereto as Exhibit 8.

6. Plaintiff's tax returns for the years ended March 31, 1941, through March 31, 1946, inclusive, reported net incomes as shown on Exhibit 9.

7. The plaintiff's federal tax returns were examined by the Commissioner of Internal Revenue for the fiscal years ended March 31, 1941, through March 31, 1946, inclusive, and net income tax, declared value excess profits tax and [fol. 21] excess profits tax liabilities were revised in accordance with Exhibit 10. The plaintiff was duly advised of these changes made by the Commissioner.

8. The additional taxes, together with interest thereon, resulting from the determinations referred to in paragraph 7 hereof were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York. Attached hereto as Exhibit 10a are true copies of Form 899, Certificate of Assessments and Payments, covering fiscal years ended March 31, 1942, through March 31, 1946, inclusive.

9. Plaintiff filed claims for refund of federal taxes on Forms 843 with the Collector of Internal Revenue for the

fiscal years ended March 31, 1942, through March 31, 1946, inclusive. True copies of said claims for refund are attached hereto as Exhibits 11, 11a, 12, 13, 14 and 15. The amount of refund claimed on each of these Forms 843 is as follows:

Year Ended	Date Claim Filed	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
March 31, 1942	6/14/1945	—	$ 318,857.67	—
March 31, 1942	6/14/1945	$7,413.00	—	—
March 31, 1943	6/14/1945	—	—	$90,086.29
March 31, 1944	6/14/1945	—	1,008,403.24	—
March 31, 1945	8/ 9/1948	—	103,754.75	—
March 31, 1946	8/ 9/1948	—	92,433.65	—

[fol. 22] 10. Attached hereto as Exhibit 16 is a true copy of a letter dated April 6, 1953, addressed to plaintiff by the Assistant District Commissioner of Internal Revenue, advising plaintiff that its claim for refund of $103,754.75 of excess profits tax paid for the fiscal year ended March 31, 1945, would be disallowed. Attached hereto as Exhibit 17 is a true copy of notice of disallowance (Form 6917) dated April 15, 1953, addressed to the plaintiff by the Head of the Collection Division, Internal Revenue Service. Other than the foregoing letters above, the Commissioner has not issued formal notice of rejection in accordance with Section 3772 (a)(2) of the Internal Revenue Code of 1939 for the fiscal years ended March 31, 1942, March 31, 1943, March 31, 1944, and March 31, 1946. Attached hereto as Exhibit 18 is a true copy of a letter (with attached statement) dated December 15, 1953, addressed to plaintiff by the Commissioner of Internal Revenue. The foregoing letters and notices gave plaintiff statutory notice of disallowance with regard to certain portions of its application for relief (Form 991) and claim for refund (Form 843) regarding excess profits tax liability for the fiscal year ended March 31, 1945.

11. Each of plaintiff's claims for refund on Form 843 for fiscal year ended March 31, 1942, claims an increased excess profits tax credit for an unused excess profits credit carry-over from the year ended March 31, 1941, and an unused excess profits credit carry-back from March 31, 1943. Plaintiff's claim for refund for fiscal year ended March 31, 1944,

[fol. 23] claims an unused excess profits credit carry-over from the fiscal year ended March 31, 1943. Taxpayer's base period net income as adjusted for excess profits tax purposes is as follows:

Fiscal Year Ended	Average Base Period Net Income	
	Straight Average	Increase in Lowest Year Sec. 713(c)
March 31, 1937	$1,125,914.09	$1,125,914.09
March 31, 1938	949,465.76	949,465.76
March 31, 1939	488,994.00	754,918.94
March 31, 1940	944,295.88	944,295.88
Aggregate	$3,508,669.73	$3,774,594.67
Average	877,167.43	943,647.67
Average Base Period Net Income Used On Returns or Allowed		943,647.67
Increase in Average Earnings under Sec. 713(e)		66,481.21

Taxpayer has availed itself of the benefits of Section 710 (a)(1)(B) of the Internal Revenue Code of 1939 (80% limitation) for the fiscal year ended March 31, 1945, and received a net tax benefit in the amount of $19,374.58.

12. During its base period years, taxable years ended March 31, 1937, through March 31, 1940, inclusive, plaintiff deducted "Bad Debts" on the "Reserve for Bad Debt Method" on its tax returns. The amount of the initial reserve for bad debts of $333,716.44 set up at the end of the [fol. 24] fiscal year ended March 31, 1935, when the taxpayer was granted permission by the Commissioner of Internal Revenue to use the reserve method, gave consideration to the previous four years' experience of the company which disclosed bad debts as follows:

Year Ended	Net Sales	Notes and Accounts Receivable	Bad Debts
March 31, 1930		$4,561,749	
March 31, 1931	$8,114,519.95	4,952,843	$355,379
March 31, 1932	6,327,837.76	3,707,013	508,065
March 31, 1933	3,286,605.19	2,186,789	703,822
March 31, 1934	3,316,864.57	1,848,910	132,061

A copy of letter dated August 22, 1934, which granted plaintiff permission to adopt the reserve method of charging off bad debts, is attached hereto as Exhibit 19.

13. The aforesaid sum of $333,716.44, which was claimed as a deduction from income in its corporation income and excess profits tax return for the fiscal year ended March 31, 1935, represented approximately 13½% of the taxpayer's total accounts and notes receivable at the end of the year, including two items, "Life Insurance surrender value" and "Advances to Broadcasting Station." The revenue agent, upon audit of the aforesaid return, allowed a total deduction from income of $291,135.23 representing 12½% of its trade notes and accounts receivable but excluding therefrom the [fol. 25] two above-stated items. This amount of $291,135.23 included the deduction of $58,952.87 for bad debts actually incurred during the fiscal year ended March 31, 1935. For the fiscal year ended March 31, 1936, the Commissioner of Internal Revenue allowed as a reasonable addition to the reserve for bad debts and as a tax deduction for that year a sum in the amount of 10% of the increase as of March 31, 1936, in the trade notes and accounts receivable over those as of March 31, 1935. On April 1, 1936, at the beginning of plaintiff's base period years, the reserve for bad debts maintained by the plaintiff on its books stood at $426,563.90. On April 1, 1936, the adjusted reserve for bad debts which had previously been allowed for tax purposes by the Commissioner of Internal Revenue was $331,062.86.

14. During the base period years, the adjusted increases in the reserve for bad debts claimed as a tax deduction each year by plaintiff and the adjusted increases in the reserve for bad debts allowed as a tax deduction each year by the Commissioner of Internal Revenue were as follows:

Year Ended	Adjusted Increases in Reserve for Bad Debts Claimed as Tax Deduction	Adjusted Increases in Reserve for Bad Debt Allowed as Tax Deduction
March 31, 1937	$198,859.94	$126,889.72
March 31, 1938	236,434.28	205,595.24
March 31, 1939	(157,470.82)*	(136,931.37)*
March 31, 1940	158,511.67	137,836.23

* ( ) — Adjusted Decrease in Reserve for Bad Debts.

* For the fiscal year ended March 31, 1939, the plaintiff reported as income in its income and excess profits tax

return "Decrease in Reserve for Doubtful Accounts, $157,470.82." The Commissioner of Internal Revenue adjusted the "Decrease in Reserve for Doubtful Accounts" by only increasing net income 10% of the decrease in the accounts and notes receivable, namely, the sum of $136,931.37.

[fol. 26] 15. Plaintiff's average base period net income shown in paragraph 11 hereof and allowed as an excess profits tax credit for fiscal years ended March 31, 1941, through March 31, 1946, inclusive, was computed on the basis of the adjusted increases in the reserve for bad debts allowed as a tax deduction by the Commissioner of Internal Revenue during the base period years.

16. For fiscal years ended March 31, 1935, through March 31, 1941, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provision for bad debts per plaintiff's books, adjusted increases in reserve for bad debts claimed as tax deductions, adjusted increases in reserve for bad debts allowed as tax deductions and the cumulative reserve for bad debts, per books and for tax purposes, are shown on the attached Exhibit 19a.

17. On its income tax return for the fiscal year ended March 31, 1941, plaintiff claimed as an addition to the reserve for bad debts and a tax deduction the sum of $113,069.64. By revenue agent's report dated October 9, 1942, the claimed addition to the reserve for bad debts was reduced to $90,408.41. Thereafter, a post review of the October 9, 1942, revenue agent's report was made whereby it was proposed that the addition to the reserve for bad debt which had been allowed to the extent of $90,408.41 be eliminated *in toto*. Mr. A. Carnow, Assistant Treasurer of Bulova Watch Company, Inc., addressed a letter dated [fol. 27] August 17, 1943, to Mr. J. S. Stern, Internal Revenue Agent, New York, New York, a true copy of which is attached hereto as Exhibit 20. By letter dated November 9, 1943, IT:R:A-4-ZMS, a copy of which is attached and marked Exhibit 20-A, Revenue Agent in Charge was advised to disallow the entire bad debt deduction claimed for the period ended March 31, 1941. By letter dated November 10, 1944, attached to which was a copy of supplemental report dated February 15, 1944, true copies of which are

attached as Exhibit 21, taxpayer was advised that the addition of $90,408.41 to the reserve for bad debts for which a tax deduction had been sought had been disallowed by the Commissioner of Internal Revenue and that, accordingly, a deficiency would be assessed. In addition for fiscal year ended March 31, 1941, the Commissioner of Internal Revenue increased certain capital stock tax deductions available to the taxpayer in the amount of $2,100.

The net result of the aforementioned adjustments resulted in an additional income tax of $21,194.01 and excess profits tax of $12,333.39 which was duly assessed by the Commissioner of Internal Revenue and duly paid by plaintiff.

18. On April 1, 1941, at the beginning of the period for which claims for refunds were filed on Forms 843 for fiscal years ended March 31, 1942, through March 31, 1946, inclusive, the cumulative reserve for bad debts maintained by the plaintiff on its books was $740,353.16. On April 1, 1941, the cumulative reserve for bad debts which had been previously allowed by the Commissioner of Internal Revenue for tax purposes was $452,599.99.

[fol. 28] 19. On its federal tax returns for fiscal years ended March 31, 1941, through March 31, 1944, inclusive (in Schedule M thereof), plaintiff reported certain accounting adjustments which it made to its reserve for bad debts and earned surplus account during each of these fiscal years.

20. For the fiscal years ended March 31, 1941, through March 31, 1946, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provision for bad debts per plaintiff's books and the cumulative reserve for bad debts per plaintiff's books, are shown on attached Exhibit 22.

21. Plaintiff reported as income in its income and declared value excess profits tax return for the fiscal year ended March 31, 1942, "Reduction in Reserve for Doubtful Accounts, $204,722.75" and paid income and excess profits tax thereon. This sum was made up as follows:

Bad Debts actually sustained	$ 60,477.48
Additional Debit to Reserve	164,920.71
	$225,398.19
Less: Amount credited to Surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for the year ended March 31, 1940	20,675.44
Amount reported in income	$204,722.75

No adjustment was made in the figure of $204,722.75 by the Commissioner of Internal Revenue.

[fol. 29] 22. Plaintiff reported as income in its income and declared value excess profits tax return for the fiscal year ended March 31, 1943, "Reduction in Reserve for Doubtful Accounts, $227,541.66" and paid income tax thereon. This sum was made up as follows:

Debit to Reserve for Bad Debts	$246,835.98
Less: Amount credited to Surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for year ended March 31, 1941	22,661.23
	$224,174.75
Add: Recovery of Bad Debts during year ended March 31, 1943	3,366.91
Amount reported in income	$227,541.66

No adjustment was made in the figure of $227,541.66 by the Commissioner of Internal Revenue.

23. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in the years ended March 31, 1941, through March 31, 1946.

24. In the event the Court determines that plaintiff is entitled to recover any excess profits tax paid for the years

ended March 31, 1942, and March 31, 1944, through March 31, 1946, then additional income taxes may be due for such years.

Bernard Weiss, Attorney for Plaintiff.

Charles K. Rice, Acting Assistant Attorney General, Attorney for Defendant.

H. S. Fessenden, Attorney.
Thomas Hogan, Attorney.

[redacted]

TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE

UP TH MANHATTAN

In re: [redacted]
630 FIFTH AVENUE, NEW YORK

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

[redacted]

The following is a transcript of the records of this office covering the [redacted]

above in respect to [redacted]
(Character of tax)

for the [redacted] FISCAL YEAR [redacted]
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT NO OR PAGE AND LINE	4. AMOUNT ASSESSED	5. PAID, ABATED, OR CREDITED: A. DATE OR SCHEDULE NO	5. PAID, ABATED, OR CREDITED: B. AMOUNT	6. PAY. REC.	7. REFERENCE OR EXPLANATION
ADDL 1941 DELQ	1945	9/14 523838	2062 50	9/6/45			
			INT 378 72				6/15/42-7/1/45
				10/4/45	2062 50	PD	REC. 9/4/45
				11/8/45	378 72	PD	REC. 9/28/45
				NO OUTSTANDING BALANCE			17-9/14/45
ADDL 1942 DELQ	1945	9/14 523839	2750 00	9/6/45			
			INT 339 96				6/15/43-7/1/45
				10/4/45	2750 00	PD	REC. 9/4/45
				11/8/45	339 96	PD	REC. 9/28/45
							17-9/14/45
				NO OUTSTANDING BALANCE			MIN.5911-1/10/46
ADDL		9/14					

[redacted]

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

[redacted]
OFFICE OF DIRECTOR OF INTERNAL REVENUE

NEW YORK

In re: [redacted] CO., INC.
(Name of taxpayer)

630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

OC:10:NEW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)

for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. Taxable Period	2. Date and Year	3. Asst. No. or Page and Line	4. Amount Assessed		5. Paid, Abated, or Credited: Date or Symbols No.	5. Paid, Abated, or Credited: Amount		7. Pay. Ad. Cr.	8. Adjustment of Overassessments
			IT						
FYE 3/31/42	1942	AUGUST 410155	366,652	05	8/14/42				
			6,972	67		43,640	2[illegible]	PD	REC. 8/12/42
			DUE		8/31/42	50,000	00	PD	FR 9 CD PFT 6/15/42
					9/15/42	93,406	18	PD	REC. 9/15/42
					12/16/42	93,406	18	PD	REC. 12/11/42
					3/15/43	92,972	12	PD	REC. 3/12/43
									6% INT pa-$416.82 4/530419/43
									843 R $7413.00 F-6/14-N-6/30/45
					NO OUTSTANDING BALANCE				
FYE 3/31/43	1942	AUGUST 406126	315,118	87	8/14/42	29,067	52	PD	REC. 8/12/42
					8/31/42	50,000	00	PD	FR 9 PD PFT 6/15/42
					9/15/42	78,779	72	PD	REC. 9/15/42
					12/16/42	78,779	72	PD	REC. 12/11/42
					3/15/43	78,491	87	PD	REC. 3/12/43

Form 899
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
CC:C:REW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1. Taxable Period	2. Liability Year	3. Acty. No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED 5. Date of Schedule No.	6. Amount		7. Paid As. Cr.	8. Adjustment of Overassessments
FYE 3/31/42	1943	11/5 529006	EP ✓ 3738	80					1121 - S/406126
									272 D
			INT 289	01					INT TO 9/29/43
					12/1/43	4027	81	PD	REC. 11/15/43
									7658-11/10/43
									843 R $28852.67
									F-6/14-M-8/24/45
					NO OUTSTANDING BALANCE				
FYE 3/31/42	1943	11/5 529007	17 ✓ 772	68					1120 - S/410855
									272 D
			INT 59	73					
			DVEP ✓ 440	33					
			INT 34	04					INT TO 9/29/43
					12/3/43	1306	78	PD	REC. 11/15/43
									7658-11/10/43
									843 R $7413.00
									F-6/14-M-8/31/45
					NO OUTSTANDING BALANCE				

Form 866
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO. INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION: CC:C:REV # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1. Taxable Period	2. Left and Year	3. Acct No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
FYE 3/31/43	1943	AUGUST 411550	347,070 52	8/17/43	11,885 31	PD	REC. 8/13/43
				8/31/43	75,000 00	PD	FR 9 CD PFT 6/14/43
				10/5/43	86,767 63	PD	RCD. 9/15/43
				12/27/43	86,767 63	PD	RCD. 12/13/43
				3/24/44	86,649 95	PD	RCD. 3/10/44
							843 R $90086.29 F-6/14-M-6/30/45
							CERT O/A $12,145.20- # 694
				NO OUTSTANDING BALANCE			
FYE 3/31/43	1943	E0801482	NON-TAXABLE				
FYE 3/31/43	1944	12/22 529009	5664 30	12/22/44			1120 - S/411550 272 D INT TO 7/28/44
			INT 380 28				
				1/17/45	6044 58	PD	RCD. 1/12/45
							MIM.$5911-SEE ORIG.- S/411550/43-1 /10/46
							843 R $90,086.29 F-6/15-M-7/31/45
				[illegible] BALANCE			

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF I:

UPPER MANHA

In re: EUROPA PAPER CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER:

CC:C:REV 4 60750
(Refer to symbols and date of letter requesting this certificate)

The following is a [illegible] of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)
for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1 Taxable Period	2 Last and Year	3 Pa	[illegible]	4 Amount Assessed		PAID, ABATED, OR CREDITED 5 Date or Schedule No.	5 Amount		7 Paid An. C.R.	8 Adjustment or Overassessments
FYE 3/31/43	1947	S	-12 C	34902	11					1120 - S/411550
				INT 8113	54					272 D 9D RAR
										INT TO 4/30/47
						8/29/47	43015	65	PD	REC. 5/1/47
						NO OUTSTANDING BALANCE				7658-7/2/47
FYE 3/31/44	1947	6/12 SPL 8-08	C	DEP- 31276	12					1120 - S/411509
				INT 5498	32					272 D-9D-RAR
						8/19/47	3700	10	PD	REC. 7/11/47
						8/29/47	12222	67	PD	REC. 5/1/47
						10/15/47	20851	67	ABT	SCH 121268
										CERT O/A- $20851.67-3/31/44
						NO OUTSTANDING BALANCE				7658-7/2/47
FYE 3/31/44	1947	6/12 SPL 8-100		DEP- 451,390	73					1121 - S/406910
				IN-74,284	68					272 D 9D RAR
							45,139	07	PWC	OFFSET
						8/19/47	4,205	07	PD	REC. 7/11/47
						8/29/47	476,330	07	PD	REC. 5/1/47
						8/29/47	1	20	PD	REC. 5/1/47
						NO OUTSTANDING BALANCE				7658-7/2/47

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the

[redacted]

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
Office of Director of Internal Revenue

UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)

630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

OC:C:NEW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)

for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. Tax-able Period	2. Date and Year	3. Asmt. No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED: 5. Date or Schedule No.	6. Amount		7. Pay. Ar. Cr.	8. Adjustment or Overassessment
FYE		AUGUST	E						
3/31/44	1944	406910	1,008,403	24	8/17/44				
			INT-2,421	01		244,079	82	PD	REC. 8/14/44
					8/31/44	10,442	00	PD	TR FR 9 PD FYI
					9/26/44	252,100	81	PD	REC. 9/14/44
					12/20/44	252,100	81	PD	REC. 12/15/44
					4/17/45	252,100	81	PD	REC. 3/15/45
									CERT O/A $57515.46 IT AM # 694
									843 R $1,008,403.24 F-6/14-M-9/30/45
									POST WAR REFUND TO BUR.12/20/45-MAKE NO CHANGE IN ACCOUNT
					NO OUTSTANDING BALANCE				MIM.# 5911-$63906.06- 1/15/46

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the

Form 866
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: EVLOVA WATCH CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
CC:C:KEW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax), for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/45 (Period covered)

1. Taxable Period	2. First and Year	3. Acct No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount		7. Pay. Ab. Cr.	8. Abatements or Overassessments
FYE									
3/31/44	1944	AUGUST 411509	396,635	44	8/17/44				
		DEF	24,500	70					
		INT	302	84					
						31,028	84	PD	REC. 8/14/44
					8/31/44	75,000	00	PD	TR FR 9 00 FY16/29/44
					9/26/44	105,284	04	PD	REC. 9/14/44
					12/20/44	105,063	03	PD	REC. 12/14/44
					3/28/45	105,063	03	PD	REC. 3/15/45
									CERT O/A $210,851.67
									IT A 121268
									CERT O/A $4950.79
									IT AM # 694
									MII.#5911-$4950.79 1/16/46
					NO OUTSTANDING BALANCE				

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the

Ex 35 Page 37

ADDL											
1943	1945	9/14									
DELQ		523840		1557	57	9/6/45					
			INT	99	09						
						10/4/45	1557	55	PD	6/15/44-7/7/45	
						11/8/45	99	11	PD	REC. 9/1/45	
										REC. 9/28/45	
										17-9/14/45	

NO OUTSTANDING BALANCE MIM.5911-1/10/46

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54

Harold B. Steam
Director of Internal Revenue

DISTRICT

PP:FW:CR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown thereon.

Date of certificate FEBRUARY 5, 1954

Harold B. Adams

DISTRICT / Director of Internal Revenue

T:I:D:A:P:FW:CR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54

Harold B. A. Hearn

U.S. GOVERNMENT PRINTING OFFICE 16-13000-1

(See instructions on reverse side) DISTRICT Director of Internal Revenue.

CR:C:A:A:RP:FV:CR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified is true and complete for the periods stated and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

[illegible] FEB[illegible] 1[illegible] 1954

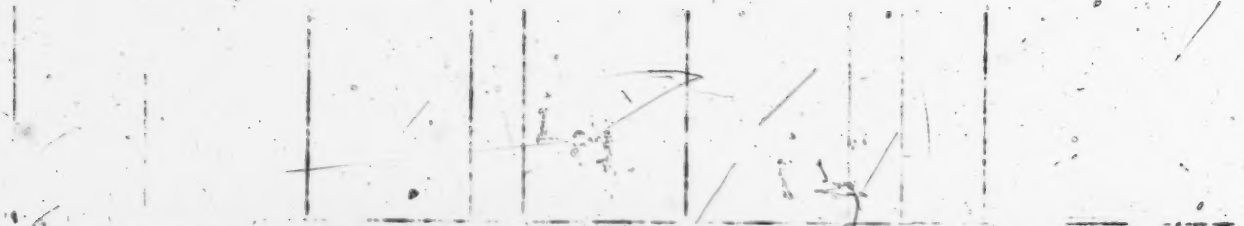
Harold B. O'Hearn

[illegible] DISTRICT Director of Internal Revenue

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date FEBRUARY 5 , 19 54 Harold B Graham

DISTRICT



I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5 , 19 54

Harold B. Hearn
DISTRICT Director of Internal Revenue

TN:C:J:A:RP:F...:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 1954

Harold B. Steward
(For instructions as to return of this) DISTRICT Director of Internal Revenue.

UM:C:A:A:RP:FW:OR

[fol. 39]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

BULOVA WATCH COMPANY, INC.

v.

THE UNITED STATES

Mr. Bernard Weiss for the plaintiff.

Mr. H. S. Fessenden, with whom was Mr. Assistant Attorney General Charles K. Rice, for the defendant. Mr. James P. Garland was on the brief.

OPINION—July 16, 1958

MADDEN, Judge, delivered the opinion of the court:

The plaintiff sues to recover income and excess profits taxes for its fiscal years 1942 through 1946. The principal asserted basis for recovery has to do with the way in which deductions for bad debts were treated in computing the plaintiff's taxes.

During the years 1931 through 1934 the plaintiff seems to have had a policy of pushing sales regardless of the credit of the purchasers. Some 13½ percent of its accounts proved uncollectible and bad debt deductions from taxable income were taken for them. On March 31, 1935, the plaintiff, under the applicable provision of section 23 (k) of the Revenue Act of 193 , 48 Stat. 680, set up a reserve for bad debts instead of deducting specific bad debts for each year. The initial reserve was $333,716.44 which was approximately 13½ percent of the plaintiff's accounts and notes receivable at the time the reserve was set up. The revenue agent allowed a deduction from income of only $291,135.23, which was 12½ percent of the plaintiff's trade notes and accounts receivable.

In fact, in the fiscal year 1935 during which the $291,135.23 deduction was allowed, the plaintiff's actual bad debt losses [fol. 40] were only $58,952.67. This was because economic conditions were better and a new credit manager was more careful in extending credit.

Under the reserve for bad debts arrangement, if, after the reserve is set up, the taxpayer's accounts receivable at the end of the next fiscal year have increased, it is allowed to add to the reserve a proper percentage of the increase, and take as a bad debt deduction for that year the sum representing that reasonable percentage of the increase. That addition to the bad debt reserve in fiscal year 1936 was $116,103.70, the Commissioner having reduced the allowable percentage from 12½ to 10.

During the fiscal years 1937, 1938, and 1940 the plaintiff's receivables increased each year, and the plaintiff set up on its books a proportionate addition to its reserve for bad debts and was allowed to deduct from its taxable income a somewhat smaller amount, *viz.* 10 percent of the increase, which amount the revenue agent regarded as sufficient. In the fiscal year 1939 the plaintiff's receivables decreased, hence there was a subtraction from its bad debt reserve of a percentage of the decrease, and the amount so subtracted from the reserve was, presumably, added to its taxable income. In all of these years the plaintiff's actual losses from bad debts were nowhere near the amounts added to its bad debt reserve and deducted from its income.

As we shall see, when the Excess Profits Tax statute was passed in 1940, it fixed upon certain years, for this plaintiff the fiscal years 1937 through 1940, as the "base period" years, and the taxpayer's taxable income in those years became retroactively important in computing its excess profits taxes during the war years.

For the fiscal year ending March 31, 1941, the Commissioner of Internal Revenue did not allow any deduction from taxable income nor any addition to the bad debt reserve because the existing unused reserve seemed ample in the light of the plaintiff's actual bad debt experience. The plaintiff, commenting in 1943 on this disallowance, claimed that the reserve was inadequate and should have been increased. The Commissioner took no exception, in any regard here relevant, to the plaintiff's returns for 1942 and 1943.

[fol. 41] In 1945 the plaintiff asserted its present claim that it should not have been allowed to take the unrealistically large bad debt deductions from its income during the years 1935 to 1940. The obvious reason for this change of position was that those years included the base period

years specified in the excess profits tax statute, and the smaller one's taxable income was during those years, the more of his profits during the war years were "excess profits," taxable at high rates. If, therefore, the plaintiff's deductions for bad debts during the base period years had been only the actual amount of its bad debt losses, or the amount which it now says was a reasonable reserve for bad debts, its taxable income during those years would have been larger, and its war time taxable income would not have been so greatly in "excess" of it.

The plaintiff says that the provisions of section 734 of the Internal Revenue Code of 1939 authorize it to reconstruct its base period taxable income. The title of that section is "Adjustment in Case of Position Inconsistent with Prior Income Tax Liability." The section, particularly its subsection (b) (1) (A), says that if an item affecting the determination of the excess profits tax credit is treated in a manner inconsistent with its treatment in the determination of the income tax liability of the taxpayer for a prior taxable year or years, then the income tax treatment for the prior taxable year or years should be reopened and recomputed, though the prior year or years would otherwise be foreclosed from reexamination.

The meaning of the statute is by no means clear. The plaintiff asserts that the Commissioner, in denying the plaintiff the right to make any further addition to its bad debt reserve in the fiscal year 1941 and thereafter, was "inconsistent" with his allowance of the original setting up of the reserve in 1935 and of the additions to it in the succeeding years prior to 1941. The Government says that the disallowance in 1941 was not a rejection of the plan of a reserve for bad debts, but was a recognition of the fact that the reserve was already large enough to cover such losses for the year 1941 and some years thereafter.

In *Leonard Refineries, Inc.*, 11 T. C. 1000, the taxpayer claimed depreciation as a deduction in the excess profits tax [fol. 42] years 1943 and 1944. It asserted that it had taken excessive depreciation in a base period year and thereby used up its depreciation allowance, but that it should not thereby be prevented from taking proper depreciation in the later years. The Tax Court held that the taxpayer had taken excessive depreciation in the base period year; that it had the right to take proper depreciation in the excess

profits tax years; that if it did so, it was required by section 734 to go back and recompute its deductions for depreciation in prior years and pay its taxes for those years according to the recomputation. The result must have been that the taxpayer's base period income was increased, its income in the war years had less "excess" in it, and it got the depreciation deduction in the war years when the tax rates were high.

In *Leonard Refineries* the only "inconsistency" was instigated by the taxpayer itself, admitting and asserting that it had taken an improper deduction in a base period year. The Commissioner was not raising the question and could not have raised it because the prior years were foreclosed by the statute of limitations. The Tax Court's interpretation of section 734 seems to have been that it gave a taxpayer, when it was subjected to the high excess profits tax rates, an opportunity to take a second look at what it had done during the years which were later designated as the base period years, and correct the erroneous computations which it had made during those years, if it would be to its advantage to do so. *American Pad & Textile Co.*, 16 T. C. 1304, is in accord with *Leonard Refineries*. *Carithers-Wallace-Courtenay*, 5 T. C. 942; *Rosemary Manufacturing Co.*, 9 T. C. 851; *The Kawneer Co.*, 13 T. C. 336; and *Guss Blass Co.*, 18 T. C. 261, support the doctrine of *Leonard Refineries*, at least by inference.

The interpretation given to section 734 by the Tax Court in *Leonard Refineries* is justified by the legislative history of the section. That history shows that the section was a relief measure designed to prevent the hardships and inequalities which would otherwise result, if a corporate taxpayer was not permitted, when computing its excess profits credit, to show its "true income" for the base period years and thus be required to pay excess profits tax rates only upon those profits which were, in fact, excessive. [87 Cong. [fol. 43] Record pp. 1372-3, 1377, 77th Cong., 1st Sess.] Section 11 of H. R. 3531, which ultimately became section 734, was explained on the floor of Congress as follows:

> Page 28, section 11, provides for adjustment in case of inconsistent positions. This allows for adjustments during the base period as to income and amounts reported for income taxes. It will be remembered that the present law bases the credit on the amount of the

> normal tax net income for the corporation during the base period. It does not provide for the amount of income as reported on the corporation's income-tax report, but it provides for the income during the years of the base period. As an illustration, assume that a corporation reported on its income-tax return for one of the years of the base period $100. Now, it comes along when it wants to show as large an amount as it can during the base period for excess-profits tax purposes, and says, "My income for a certain year during the base period was not $100, as was reported, but it was $175, and, therefore, I want the advantage of $175 in that year of the base period for excess-profits tax purposes." This provision says to the corporation, in effect, "Very well. You may go back and make that adjustment, but you must pay the income tax for the difference between what you reported and what you now say you made during that year of the base period plus interest." [87 Cong. Record pp. 1380-81, 77th Cong., 1st Sess.]

An example cited in the committee reports accompanying H. R. 3531 further supports the view that Congress intended, by the terms of what is now section 734, to give taxpayers this benefit of hindsight in computing their excess profits credit. [H. Rept. 146, pp. 17-18, 77th Cong., 1st Sess.; S. Rept. 75, pp. 17-18, 77th Cong., 1st Sess.]

During the base period years the plaintiff was allowed to take bad debt deductions of 10 percent of its receivables. Its actual bad debt losses ranged from .37 of one percent to 1.13 percent. Under all the facts and circumstances of this case, we conclude that the deductions were grossly excessive and erroneous under the general principles governing the reasonableness of such reserves and additions thereto. *Black Motor Co.*, 41 B. T. A. 300; *Mill Factors Corp.*, 14 T. C. 1366; *Paramount Liquor Co.* v. *Commissioner*, 242 F. 2d 249 (8th Cir. 1957). The plaintiff should have been re- [fol. 44] quired to limit its deductions to its actual losses, or to a reserve amount which bore a reasonable relation to its loss experience. We think section 734 gives the plaintiff the privilege of recomputing its income and income tax for the prior years, and its excess profits tax credit for the excess profits tax years.

The plaintiff claims that the cost of a burglar alarm system installed by it in the year ended March 31, 1940, which was taken as a deduction in that year, should have been capitalized and made the subject of depreciation over a number of years. For the reasons elaborated in connection with the bad debt claim, we think the plaintiff's contention is valid.

The plaintiff makes a similar claim with regard to legal fees paid by it in 1937 in connection with the retirement of its preferred stock. It took a deduction for these fees in the year ended March 31, 1937. It now says that it should have capitalized them. That would have been the proper method of accounting for them. The plaintiff is not asserting a right to do anything with these fees in the excess profits tax years, since they would not be a subject of depreciation. But section 734 (b) (1) seems to be broad enough to allow the recomputation even in this situation.[1] This is an item which affects "the determination of the excess profits credit," and the plaintiff says it should not have been taken as a deduction from income in the base period year, though it was so taken. This constitutes the necessary inconsistency. The Tax Court decision in *The Kawneer Co., supra,* seems to be to that effect. See also the legislative history cited above.

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[1] Sec. 734. (b) *Circumstances of Adjustment.*—

(1) If—

(A) in determining at any time the tax of a taxpayer under this subchapter an item affecting the determination of the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income-tax liability of such taxpayer or a predecessor for a prior taxable year or years, and

(B) the treatment of such item in the prior taxable year or years consistently with the determination under this subchapter would effect an increase or decrease in the amount of the income taxes previously determined for such taxable year or years, and

(C) on the date of such determination of the tax under this subchapter correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by the operation of any law or rule of law (other than section 3761, relating to compromises),

then the correction shall be made by an adjustment under this section. If in a subsequent determination of the tax under this subchapter for such taxable year such inconsistent treatment is not adopted, then the correction shall not be made in connection with such subsequent determination.

Form 866
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

CC:C:REV # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1 Taxable Period	2 List and Year	3 Acct No. or Page and Line	4 Amount Assessed		PAID, ABATED, OR CREDITED: 5 Date or Schedule No.	6 Amount		7 Paid As	8 Adjustment of Overassessments
FYE 3/31/45	1945	AUGUST 406511	E1 2,292,416	49	8/31/45				REC. 8/13/45
					8/31/45	620,000	00	PD	6/15/45 FR 9 CD
					10/16/45	526,208	25	PD	REC. 9/12/45
					12/21/45	578,104	13	PD	REC. 12/14/45
					3/30/46	429,593	99	PD	REC. 3/15/46
					4/4/46	79,604	07	CR	SCH IT AM 694
					4/4/46	57,515	46	CR	SCH IT AM 694
					4/17/46	6,390	60	PD	REC. 4/3/46
			SCB	01	2/16/49				TO 2/581339/49
									CORR. VOU. $ 500.00
					NO OUTSTANDING BALANCE				FR 8/412120/45
FYE 3/31/45	1945	AUGUST 412121	378,786	50	8/20/45	15,294	54	PD	REC. 8/13/45
			DVEP-81,785	94					
					8/31/45	100,000	00	PD	6/15/45 FR 9 CD
					10/16/45	115,143	11	PD	REC. 9/12/45
					12/21/45	115,143	11	PD	REC. 12/15/45
					3/30/46	93,096	33	PD	REC. 3/16/46
					4/4/46	4,950	79	CR	IT AM 694
					4/4/46	4,950	79	ABT	IT AM 694
					4/4/46	12,145	20	CR	IT AM 694
			151	43	4/26/46			PD	8/13/48 TO 4/5308 42/46
								CORR. VOU. $157.43 TO 4/5300/45	
					NO OUTSTANDING BALANCE			CERT O/A	$4950.79 IT AM 694

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits and refunds relating thereto, are shown thereon.

TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE

UPPER MANHATTAN

In re: FULOYA WATCH CO., INC.
(Name of taxpayer)

630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

CC:C:RW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1 Taxable Period	2 Last and Year	3 Acct No. or Page and Line	4 Amount Assessed		PAID, ABATED, OR CREDITED 5 Date or Schedule No	6 Amount		7 Paid Ab. Cr.	8 Adjustment or Overassessment
FYE 3/31/45	1948	8/12 SPL 10-040	EP-49601	68					1121 - 8/406511
			INT 8521	98					272 D 9D
									INT TO 4/26/48
					8/19/48	58123	66	PD	FR 9 D PYT-4/28/48
					NO OUTSTANDING BALANCE				
FYE 3/31/45	1948	8/12 SPL 10-060	DVEP- 2006	23					1120 - 8/412121
			INT 344	69					272 D 9D
									INT TO 4/26/48
					8/19/48	2515	63	PD	FR 9 D PYT-4/28/48
			164	71	5/8/50				TO 5/580328/50
					NO OUTSTANDING BALANCE				
FYE 3/31/46	1950	9/19 SPL 14-080	2443	09					1120 - 9/410122
			DVEP-1842	49					272 D 9D RAR
			INT 323	34					INT TO 5/18/49
			INT 428	75	11/15/50	5037	67	CR	SCH B 17
					NO OUTSTANDING BALANCE				1331-5037.67-10/10/52
FYE 3/31/46	1950	9/19 SPL 14-100	EP-16796	32					1121 - 9/406509
			INT 2947	64					272 D 9D RAR
									INT TO 5/18/49
					12/20/50	19743	96	CP	5/18/49 FR 6/500092/50
					NO OUTSTANDING BALANCE				

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records

Form 866
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE

UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)

630 Fifth AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

CC:C:NEW $ 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)

for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. Taxable Period	2. Last and Year	3. Acct. No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED 5. Date or Serial No.	6. Amount		7. Form As Ck.	8. Adjustment of Overassessments
FYE									
3/31/46	1946	9/406509	1,977,783	60	9/30/46				
					9/23/46	1,750,000	00	PD	REC. 6/21/46
					10/9/46	238,891	80	PD	REC. 9/13/46
					12/5/46	19,079	90	PD	REC. 9/16/46
					1/15/47	494,445	90	PD	REC. 12/12/46
					3/15/47	475,366	00	PD	REC. 3/12/47
									843 R $92433.65
					NO OUTSTANDING BALANCE				F-8/9/48-M-7/15/49
FYE									
3/31/46	1946	9/410122	868,407	02	9/31/46				
			DEP 5,508	94					
			INT 184	78		18,663-	78	PD	REC. 8/15/46
					9/23/46	200,000	00	PD	6/21/46 FR 9 C
					10/9/46	218,478	99	PD	REC. 9/13/46
					12/27/46	218,478	99	PD	REC. 12/12/46
					3/15/47	218,478	98	PD	REC. 3/13/47
					NO OUTSTANDING BALANCE				

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records

[fol. 45] In its return for the fiscal years 1942 and 1943, the plaintiff included in its taxable income amounts which had been charged on its books to its bad debt reserve, but which it in those years transferred on its books, apparently to surplus. The amount so returned as income in those two years was somewhat in excess of the amount actually allowed to the plaintiff as bad debt deductions in prior years. If there were to be no recomputation of income and taxes, the plaintiff would seem to have overstated its income for 1943 by the amount of this excess. Since, under our decision, there will be a recomputation, this problem will be solved in the recomputation.

The plaintiff is entitled to recover, with interest as provided by law. The amount of the judgment will be determined in further proceedings had pursuant to Rule 38 (e).

It is so ordered.

REED, Justice (Ret.), sitting by designation; LARAMORE, Judge; LITTLETON, Judge; and JONES, Chief Judge, concur.

FINDINGS OF FACT

The court, having considered the evidence, a stipulation of facts, the report of Trial Commissioner Currell Vance, and the briefs and arguments of counsel, makes findings of fact as follows:

1. Plaintiff is a corporation duly organized under the laws of the State of New York. It maintains its principal place of business at Bulova Park, Flushing, L. I., N. Y. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, N. Y.

2. At all times pertinent hereto, the plaintiff maintained its books and records on an accrual basis of accounting and filed its returns on a fiscal-year basis ending March 31.

3. Plaintiff duly filed its Federal income and excess-profits tax returns for the fiscal years ended March 31, 1941 through March 31, 1946, with the collector of internal revenue, third district of New York. Upon examination by the Commissioner of Internal Revenue, the declared value excess-profits net income and tax, the excess-profits net income tax, and the income tax net income and tax were revised to be:

BULOVA WATCH COMPANY, INC.

Year ended	Date of report	Declared value excess profits tax		Excess profits tax		Income tax	
		Net income	Tax	Net income	Tax	Net income	Tax
Mar. 31, 1941	Nov. 10, 1944	$1, 462, 754. 06	None	$713, 993. 77	$12, 333. 39	$1, 037, 754. 96	$249, 061. 19
Mar. 31, 1942	Sept. 23, 1943	1, 843, 818. 17	$7, 413. 00	1, 446, 405. 17	318, 857. 67	1, 186, 047. 50	367, 424. 73
Mar. 31, 1943	May 14, 1947	1, 151, 229. 33	None	901, 229. 33	None	938, 729. 33	375, 491. 73
Mar. 31, 1944	May 14, 1947	2, 728, 441. 32	50, 826. 03	2, 432, 615. 29	1, 395, 887. 91	938, 216. 24	[1] 375, 783. 77
Mar. 31, 1945	July 13, 1948	3, 924, 066. 31	78, 841. 38	3, 575, 224. 93	2, 262, 414. 10	943, 216. 24	378, 786. 50
Mar. 31, 1946	July 27, 1950	4, 685, 135. 25	7, 351. 43	4, 002, 783. 82	1, 994, 879. 92	946, 966. 24	
						1, 007, 716. 24	[2] 870, 850. 11
						4, 104, 033. 82	

[1] Amount applicable for 275 days $938,216.24 tax under 1943 law $281, 977. 56
Amount applicable for 91 days $943,216.24 tax under 1944 law $93, 806. 21
$375, 783. 77

[2] Amount applicable for 275 days $1,007,716.24 tax under 1945 law $363, 695. 31
Amount applicable for 91 days $4,104,033.82 tax under 1946 law $384, 542. 34

Exclusive of tax on capital gains $688, 237. 65
Tax on capital gains of $730,449.82 ..... 182, 612. 46
$870, 850. 11

51

[fol. 51]

13. For the fiscal years ended March 31, 1942 through March 31, 1946, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provisions for bad debts per plaintiff's books, and the cumulative reserve for bad debts per plaintiff's books, were as follows:

Year ended	Sales	Notes and accounts receivable	Actual bad debts	Provision for bad debts plaintiff's books	Cumulative reserve for bad debts plaintiff's books
Mar. 31, 1941					$740,353
Mar. 31, 1942	$19,399,557	$5,395,679	$60,477	($364,921)	514,955
Mar. 31, 1943	19,980,902	2,760,078	(3,367)	(246,536)	271,456
Mar. 31, 1944	28,753,547	2,900,565	[1] 10,105	(194,214)	67,166
Mar. 31, 1945	35,083,345	2,543,611	(8,921)		76,087
Mar. 31, 1946	35,996,164	1,637,655	(4,961)		81,048

[1] Includes nontrading real estate loss of $20,985, Gilgro Realty Corp.

14. Plaintiff included in bad debts, and charged the reserve for bad debts with real estate write-downs of $15,809.58 in the fiscal year ended March 31, 1938, for S. Lachman—special account, and $20,985.25 in the year ended March 31, 1944 for Gilgro Realty Corp. investment, two items not strictly bad debts.

15. The ratio of actual bad debts to receivables at the beginning of the year, the 4-year average ratio of bad debts to receivables and the rate used by the Commissioner of Internal Revenue are:

Year ended	Ratio of bad debts to receivables	4-year average ratio of bad debts to receivables	Rate used by commissioner
	Percent	*Percent*	*Percent*
Mar. 31, 1935	3.19	11.05	12.5
Mar. 31, 1936	.74	9.05	10
Mar. 31, 1937	.37	2.25	10
Mar. 31, 1938	.61	.95	10
Mar. 31, 1939	.74	.63	10
Mar. 31, 1940	1.13	.75	10

16. The cumulative reserve for bad debts of $331,063 at March 31, 1936, as determined by the Commissioner of Internal Revenue, was sufficient to meet all net bad debts incurred by plaintiff from April 1, 1936, through March 31, 1946, amounting to $228,391.

17. If no further additions were made to the reserve for bad debts of $331,063 (tax basis) at March 1, 1936, the

[fol. 52]

ratio of the reserve to receivables at the end of each subsequent year for the next ten years, would have been in excess of each year's experience rate of the plaintiff and would have compared to the actual ratio of bad debts to receivables as follows:

Year ended	Current year's ratio of bad debts to receivables	Adjusted ratio of reserve for bad debts to receivables
	Percent	*Percent*
Mar. 31, 1936		9.49
Mar. 31, 1937	.37	6.68
Mar. 31, 1938	.61	4.23
Mar. 31, 1939	.74	4.37
Mar. 31, 1940	1.13	2.58
Mar. 31, 1941	.62	1.69
Mar. 31, 1942	.76	1.36
Mar. 31, 1943	(1)	2.79
Mar. 31, 1944	(1)	3.03
Mar. 31, 1945	(1)	3.81
Mar. 31, 1946	(1)	6.21

[1] Recoveries.

18. If no additions to the reserve for bad debts had been allowed after March 31, 1936, the cumulative tax reserve for bad debts at March 31, 1940, the close of plaintiff's base period, would have been $176,250, which would still have been, percentagewise, more than double the actual experience rate of the plaintiff in the year ended March 31, 1940, and almost 3½ times the average experience rate of the base-period years.

19. Plaintiff's ratios of trading bad debts to sales were 1⅔ percent in 1928, 1 percent in 1929, 2⅓ percent in 1930, 7.1 percent in 1931, 19.2 percent in 1932, 13 percent in 1933, and 1⅓ percent in 1934.

For the fiscal years ended through 1946—

	Percent
Mar. 31, 1935	1.05
Mar. 31, 1936	.22
Mar. 31, 1937	.12
Mar. 31, 1938	.19
Mar. 31, 1939	.47
Mar. 31, 1940	.42
Mar. 31, 1941	.23
Mar. 31, 1942	.31

[fol. 47]

4. The taxes set forth in finding 3 have all been paid to the collector of internal revenue, together with the following interest thereon.

Year ended	Date paid	Amount of interest	Nature of tax
Mar. 31, 1942.....	Nov. 15, 1943	$289.01	Excess profits tax.
	Nov. 15, 1943	59.73	Income tax.
	Nov. 15, 1943	94.04	Declared value excess profits tax.
Mar. 31, 1943.....	Jan. 12, 1945	380.28	Income tax.
	May 1, 1947	8,113.54	Excess profits tax.
Mar. 31, 1944.....	May 1, 1947	5,498.32	Declared value excess profits tax.
	May 1, 1947	74,284.68	Excess profits tax.
	Aug. 14, 1944	2,421.01	Excess profits tax.
	Aug. 14, 1944	28.88	Income tax.
	Sept. 14, 1944	273.96	
Mar. 31, 1945.....	Apr. 28, 1948	8,521.98	Excess profits tax.
	Apr. 28, 1948	344.69	Declared value excess profits tax.
Mar. 31, 1946.....	May 18, 1949	323.34	Declared value excess profits tax.
	May 18, 1949	428.75	Income tax.
	May 18, 1949	2,947.64	Excess profits tax.
	Aug. 15, 1946	184.78	Income tax.

5. Plaintiff duly filed claims for refund of Federal taxes on forms 843 with the collector of internal revenue for the fiscal years ended March 31, 1942 through March 31, 1946, inclusive. The amounts of refunds claimed were as follows:

Year ended	Date claim filed	Declared value excess profits tax	Excess profits tax	Income tax
Mar. 31, 1942	June 14, 1945		$318,857.67	
Mar. 31, 1942	June 14, 1945	$7,413.00		
Mar. 31, 1943	June 14, 1945			$90,086.29
Mar. 31, 1944	June 14, 1945		1,008,403.24	
Mar. 31, 1945	Aug. 9, 1948		103,754.75	
Mar. 31, 1946	Aug. 9, 1948		92,433.65	

6. In accordance with Section 3772 (a) (2) of the Internal Revenue Code of 1939, plaintiff received statutory notice its claim for refund of excess-profits tax for the fiscal year ended March 31, 1945 was disallowed. No formal notice of rejection has been issued with regard to the claims for refund for the fiscal years ended March 31, 1942, March 31, 1943, March 31, 1944, and March 31, 1946. More than 6 months have elapsed since plaintiff filed its claims for refund for the said years.

7. Each of plaintiff's claims for refund on Form 843 for the fiscal year ended March 31, 1942, claims an increased excess-profits tax credit for an unused excess-profits credit carry-over from the year ended March 31, 1941, and an un-

[fol. 48]

used excess-profits credit carry-back from March 31, 1943. Plaintiff's claim for refund for the fiscal year ended March 31, 1944, claims an unused excess-profits credit carry-over from the fiscal year ended March 31, 1943.

8. Plaintiff's base-period net income, as determined by the Commission of Internal Revenue, is as follows:

Fiscal year ended	Average base period net income	
	Straight average	Increase in lowest year sec. 713 (c)
Mar. 31, 1937	$1,126,914.09	$1,126,914.09
Mar. 31, 1938	949,465.76	949,465.76
Mar. 31, 1939	485,994.00	754,918.94
Mar. 31, 1940	944,295.88	944,295.88
Aggregate	3,506,669.73	3,774,594.67
Average	877,167.43	943,647.67

Taxpayer has availed itself of the benefits of Section 710 (a) (1) (B) of the Internal Revenue Code of 1939 (80 percent limitation) for the fiscal year ended March 31, 1945, and received a net tax benefit in the amount of $19,374.58.

9. Through the fiscal year ended March 31, 1934, plaintiff charged off bad debts on a "direct charge-off" method. During the fiscal year ended March 31, 1935, plaintiff requested and received permission from the Commissioner of Internal Revenue to charge off bad debts on the "reserve for bad debts" method, which method was used in the years ended March 31, 1935 and March 31, 1936, as well as during the base-period years ended March 31, 1937 through March 31, 1940, inclusive.

10. The amount of initial reserve for bad debts set up at March 31, 1935 was $333,716.44, which represented approximately 13½ percent of the taxpayer's total accounts and notes receivable at the end of the year, including two items, "life insurance surrender value" and "advances to broadcasting station." The 13½ percent reserve figure was adopted by Emanuel Cohan, plaintiff's accountant, by obtaining an average of actual bad debts sustained in the years ended March 31, 1931–March 31, 1934, compared with accounts and notes receivable at the end of each of said years as follows:

[fol. 49]

Year ended	Notes and accounts receivable end of year	Bad debts	Ratio of bad debts to receivables
Mar. 31, 1931	$4,952,843	$355,379	
Mar. 31, 1932	3,707,013	508,065	
Mar. 31, 1933	2,186,789	703,822	
Mar. 31, 1934	1,848,910	132,061	
	12,695,555	1,699,327	13.385%

The revenue agent, upon audit of the tax return for the year ended March 31, 1935, allowed a total deduction from income of $291,135.23, representing 12½ percent of plaintiff's trade notes and accounts receivable, excluding the two aforestated items of "life insurance surrender value" and "advances to broadcasting station." Actual bad debts of $58,952.87 incurred in the year ended March 31, 1935, were not separately deducted but considered included in the amount of $291,135.23.

11. For the fiscal year ended March 31, 1936, the Commissioner of Internal Revenue allowed as a reasonable addition to reserve for bad debts and as a tax deduction an amount equal to 10 percent of the increase in the trade notes and accounts receivable at March 31, 1936, over those of March 31, 1935. On April 1, 1936, the beginning of plaintiff's base-period years, the balance in the reserve for bad debts previously allowed by the Commissioner of Internal Revenue was $331,062.86.

12. For the fiscal years ended March 31, 1935, through March 31, 1941, inclusive, plaintiff's sales, trade notes and accounts receivable, actual net bad debts sustained, provision for bad debts per plaintiff's books, bad debts (reserve method) claimed as tax deductions, bad debts (reserve method) allowed as tax deductions and the cumulative reserve for bad debts per books and for tax purposes were as follows:

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown thereon.

Date of certificate FEBRUARY 5, 19 52

Harold B. Allen
(Director of Internal Revenue)
DISTRICT

UM:C:A:A:RP:FW:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54 Harold B. Steam

(See instructions on reverse side) DISTRICT Director of Internal Revenue

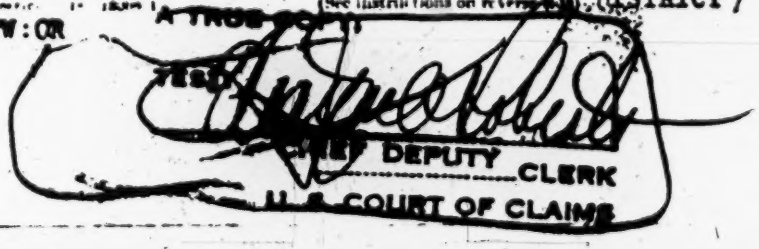
UM:C:A:RP:F:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 1954

Harold B. Steam
DISTRICT / Director of Internal Revenue.

UM:C:A:A:RP:FW:CR



[fol. 50]

BULOVA WATCH CO.

Year ended	Sales	Notes and accounts receivable	Actual bad debts sustained	Provision for bad debts per plaintiff's books	Adjusted increase in reserve for bad debts claimed as tax deductions	Adjusted increase in reserve for bad debts allowed as tax deductions	Cumulative reserve for bad debts	
							Per books	Tax basis
Mar. 31, 1935	$5,715,205.16	$2,329,081.83	$58,952.67	$333,716.44	$333,716.44	$201,135.23	$274,763.87	$283,183.36
Mar. 31, 1936	7,800,901.23	3,490,118.67	17,223.20	169,023.53	169,023.53	116,103.70	426,563.50	331,063.86
Mar. 31, 1937	11,006,767.07	4,759,016.04	13,047.00	198,859.94	198,859.94	129,888.72	612,376.94	444,006.85
Mar. 31, 1938	15,555,603.78	6,814,968.40	[2] 44,797.60	236,434.28	236,434.28	205,895.24	804,013.62	606,708.22
Mar. 31, 1939	10,704,184.92	5,445,654.69	50,202.09	[1] (107,268.73)	[1] (157,470.82)	[1] (136,981.37)	646,543.70	418,888.76
Mar. 31, 1940	14,707,895.14	6,824,017.02	61,675.87	220,187.54	158,511.67	137,836.23	805,054.37	494,720.12
Mar. 31, 1941	18,179,206.41	7,964,122.19	42,130.13	155,199.97 [3] (177,770.85)	113,069.64		760,283.16	483,899.99

[1] Plaintiff debited its reserve for bad debts on its books in the amount of $157,470.82 and credited Profit and Loss for that amount which was included in taxable income on its return for the year ended Mar. 31, 1939. The Commissioner of Internal Revenue in determining plaintiff's taxable income for fiscal year Mar. 31, 1939, only increased income by $136,981.37 instead of $157,470.82. On Schedule P of its Federal income tax return for the year ended Mar. 31, 1939, plaintiff charged against surplus $157,470.82 representing a reversal of original debit to reserve for bad debts and then credited surplus for $107,268.73 representing a revised debit to reserve for bad debts, the balance of $50,202.09, the actual bad debts sustained, was written off against Receivables.

[2] For the fiscal year ended Mar. 31, 1941, plaintiff's provision for bad debts was decreased by $177,770.85 and earned surplus was credited by $177,770.85. (See Tax Return, Schedule M.)

[3] Includes nontrading real estate loss of $15,909—S. Lachman special account. (Tr. 70, 71).

[fol. 53]

	Percent
Mar. 31, 1943	(1)
Mar. 31, 1944	(1)
Mar. 31, 1945	(1)
Mar. 31, 1946	(1)

[1] Recoveries.

20. Average 3-year ratios of bad debts to sales were:

Year ended	Percent
Mar. 31, 1937	.36
Mar. 31, 1938	.17
Mar. 31, 1939	.25
Mar. 31, 1940	.34
Mar. 31, 1941	.36
Mar. 31, 1942	.32
Mar. 31, 1943	.17
Mar. 31, 1944	.07
Mar. 31, 1945	(1)
Mar. 31, 1946	(1)

[1] Net recoveries of bad debts.

21. If no further additions were made to the reserve for bad debts of $331,063 (tax basis) at March 31, 1936, the reserve for bad debts at the end of each subsequent year for the next 10 years would have been in excess of anticipated bad debts based upon the use of an average 3-year ratio of bad debts to sales.

22. Plaintiff reported as income in its income and declared value excess-profits tax return for the fiscal year ended March 31, 1942, "reduction in reserve for doubtful accounts, $204,722.75" and paid income and excess-profits taxes thereon. The sum was made up as follows:

Bad debts actually sustained	$60,477.48
Additional debit to reserve	164,920.71
	225,398.19
Less: Amount credited to surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for the year ended Mar. 31, 1940	20,675.44
	204,722.75

No adjustment was made in the figure of $204,722.75 by the Commissioner of Internal Revenue.

23. The $204,722.75 included in excess-profits net income in the year ended March 31, 1942, and charged to the reserve

[fol. 54] for bad debts did not reduce the cumulative book reserve below the cumulative taxable reserve.

24. The decrease in book reserve for bad debts in the year ended March 31, 1942, was to adjust the books for the Commissioner of Internal Revenue's disallowance of bad debt deductions in prior years and bring the book reserve more into agreement with the taxable reserve.

25. Plaintiff reported as income in its income and declared value excess-profits tax return for the fiscal year ended March 31, 1943, "reduction in reserve for doubtful accounts, $227,541.66" and paid income tax thereon. This sum was made up as follows:

Debit to reserve for bad debts	$246,835.98
Less: Amount credited to surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for year ended Mar. 31, 1941	22,661.23
	224,174.75
Add: Recovery for bad debts during year ended March 31, 1943	3,366.91
Amount reported in income	227,541.66

No adjustment was made in the figure of $227,541.66 by the Commissioner of Internal Revenue.

26. The $227,541.66 included in excess-profits net income in the year ended March 31, 1943, and charged to reserve for bad debts, reduced the cumulative book reserve below the cumulative taxable reserve by $120,636.61, if no change is made in the amount of bad debts previously allowed by the Commissioner of Internal Revenue.

27. The decrease in book reserve for bad debts in the year ended March 31, 1943, was to reconcile the books to the tax audits in prior years, and in part to reflect the decrease in outstanding accounts and notes receivable at March 31, 1943, as compared to the previous year.

28. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in the years ended March 31, 1941 through March 31, 1946.

29. In 1934, Frank B. Sheinberg became credit manager of Bulova Watch Co., Inc. Prior to joining plaintiff, Sheinberg had been credit manager for 10 years of Belding Bros. [fol. 55] & Co., a large wholesale silk manufacturer in New York City.

30. Prior to 1934, plaintiff had practically no credit policy, the sales department practically dominating the credit department. Credit was being extended far in excess of customer's own capital in the business. In early 1930's the credit policy was "thrown to the winds" in order to maintain volume.

31. Upon becoming credit manager, in 1934, Sheinberg put into effect scientific credit policies. He obtained complete and full information from various mercantile agencies of each customer upon which lines of credit were based, and collections were diligently and vigorously followed up.

32. The credit terms of plaintiff during the base-period years and years at issue were sales on—

(1) open account with billing dates in January and July for sales made in the preceding 6 months, with a 2 percent discount allowed if payment was made by the tenth of the month;

(2) ten monthly notes usually beginning 30 days after shipment. No discount was permitted on these sales.

33. "Seasonal dating" credit terms were extended to customers who were financially sound and represented about 75 percent of the plaintiff's accounts.

34. Losses on accounts sold on "seasonal dating" were trivial in the years ended March 31, 1937 through March 31, 1942. Plaintiff had every reasonable assurance these accounts would not go bad.

35. A note or account receivable was determined to be worthless when plaintiff received notice of bankruptcy or assignment, or was called upon to grant long-time extension of payment. The expected salvage value of each account was set up based upon the particular facts in each case.

36. There were only slight variations between estimated salvage value set up for bad accounts and the amounts actually realized.

37. Plaintiff's receivables at the end of any one fiscal year were all collected within a 12-month period unless they went bad and were written off.

38. In the calendar years 1931, 1932, and 1933, economic conditions were chaotic, particularly in the jewelry industry, [fol. 56] a luxury industry, and a great many of plaintiff's accounts receivable from retail jewelers practically evaporated. A great many jewelers had to go through bankruptcy, reorganizations and settlements.

39. Beginning in 1934, plaintiff's business was transacted with economically stronger retailers, those who had weathered the depression without bankruptcy or settlement, and those who had reorganized, and as a result were in sound financial condition.

40. Beginning in 1934, economic conditions improved greatly in the United States. Business failures decreased sharply after the period 1930-1933, particularly in the jewelry industry.

41. The average of financial embarrassments (bankruptcies, receiverships and assignments for the benefit of creditors) in the jewelry industry in 1930-1933 was 959 per annum with liabilities of $24,221,000. In 1934 and 1935, jewelry embarrassments were 294, with liabilities of $4,989,143, and 149 with liabilities of $2,904,958, respectively. The average of financial embarrassments in the jewelry industry during the calendar years 1936-1939 was 206 per annum with liabilities of $2,845,000.

42. Total commercial failures averaged 2,215 per month in the calendar years 1930-1933, inclusive, with average liabilities of $58,314,000 compared with average monthly fail-

ures of 903 for $16,690,000 in the base-period years 1936-1939.

43. The United States Department of Commerce Index of Retail Trade rose from 63.1 in 1933 to 98.9 in 1936, and averaged 103.9 in the base-period years.

44. The sharp decrease in bad debts, from the years ended March 31, 1931 through March 31, 1934, to years ended March 31, 1936 through March 31, 1946, was due to improved economic conditions, sales to the economically stronger accounts, and the adoption of new scientific credit controls.

45. Emanuel Cohan, plaintiff's accountant, computed the amount added to the reserve for bad debts in the year ended March 31, 1936, and subsequent years, by using the last known rate allowed by the revenue agent upon examination of prior years' returns.

46. In determining the amount of the reserve for bad debts no consideration was given to the currentness or age [fol. 57] of the receivables, the changing bad debt experience of the plaintiff during the fiscal years ended March 31, 1937, through March 31, 1940, changed economic conditions, or credit policy changes.

47. Plaintiff's account was confused in his treatment of bad debts and reserves, and in some years actually reported as income the bad debts sustained.

48. The reduced amounts allowed by the Commissioner of Internal Revenue as deductions for bad debts (reserve basis) were much in excess of actual bad debts sustained.

49. The percent of receivables used by the Commissioner of Internal Revenue in determining allowable deductions for additions to reserve for bad debts in the base period ranged from 9 to 27 times actual experience of plaintiff.

50. On November 9, 1943, the Commissioner of Internal Revenue addressed a letter to the internal revenue agent in charge, New York, N. Y., relating to the March 31, 1941 return of plaintiff, wherein he stated in part that "the taxpayer has been permitted to claim excessive reserves for bad debts in the past * * *."

51. On November 10, 1944, the Commissioner of Internal Revenue addressed a letter to plaintiff relating to the March 31, 1941 return, wherein he stated in part "the average bad debts charged off for the past 5 years of $42,370.64 amount to about 7/8 percent of the average accounts receivable of $5,466,754.98. Applying this percentage to the accounts receivable at the end of the year [March 31, 1941] of $7,954,122.19, the result will be about $69,600 to be compared with the $500,000 already in the reserve * * * ."

52. Plaintiff was also advised in said letter of November 10, 1944, that the amount of bad debt deductions allowed in prior years (years ended March 31, 1937, et seq.) were not reasonable additions to the reserve for bad debts and it was never intended that a taxpayer who deducts an addition to a reserve for bad debts should obtain greater deductions than a taxpayer who deducts specific bad debts.

53. Based on economic conditions existing at March 31, 1937, and credit policies in effect, the anticipated bad debts would not be in excess of 2 percent of the receivables. The reserves for bad debts during the base period years 1937 to 1940 were excessive and erroneous under all the [fol. 58] facts and circumstances then known or reasonably to be anticipated. A reasonable reserve during that period would have been 2 percent of the receivables.

54. Plaintiff retired its preferred stock in September 1936. In connection with such retirement, plaintiff incurred and paid $3,750 to Frederick William Greenfield & Co., for special accounting services, and $7,810.07 to Cravath, Swaine & Moore for legal expenses. Both of these items were deducted in the tax return for the year ended March 31, 1937, as legal and accounting expense. The Commissioner of Internal Revenue disallowed $3,750 as a deduction but allowed the balance of $7,810.07.

55. During the fiscal year ended March 31, 1940, plaintiff installed Holmes Electric Protective Service at its office at 630 Fifth Avenue, New York, N. Y., at a cost of $5,204.92, which amount was allowed as a deduction on plaintiff's tax return for said year.

56. Plaintiff's lease on its offices at 630 Fifth Avenue, New York, N. Y., was for a period of 10 years beginning

May 1, 1939. Said lease provided that all fixtures, equipment and appurtenances, including electrical work installed during the term of the lease, were not to be removed by the tenant.

57. While the first year for which plaintiff claimed the right to revise its excess-profits credit was the fiscal year ended March 31, 1941, no claim for refund was or could be filed for that year, since the adjustment in tax due the defendant under Section 734 of the Internal Revenue Code of 1939 was greater than the excess-profits tax previously paid.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is entitled to recover, together with interest as provided by law, and judgment will be entered to that effect. The amount of recovery will be determined in further proceedings pursuant to Rule 38 (c).

[fol. 59]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

[Title omitted]

MEMORANDUM REPORT—Filed March 16, 1959

To the honorable the Chief Judge and Associate Judges of the United States Court of Claims:

On July 16, 1958, the court decided the above plaintiff was entitled to recover, but left the amount of recovery for determination pursuant to Rule 38(c).

On March 12, 1959, the parties filed a stipulation, signed by the attorneys of record, in which it is stated that on the basis of the decision set out above, the parties have stipulated that judgment may be entered for plaintiff in accordance with the following schedule of deficiencies and overpayments, that is, a net overpayment of $520,049.95, together with interest on the deficiencies and overpayments as provided by law:

[fol. 60]

Year	Deficiency	Overpayment					
	Income Tax	Income Tax	D.V.E.P.	Interest	Excess Profits Tax	Interest	Net Amount
3/31/42	$ 32,138.32		$7,413.00	$ 34.04	$211,899.28	$ 289.01	$187,497.01
3/31/43		$93,646.56		8,113.54			101,760.10
					183,758.48		
		Less: Post-War Credit Adjustment –			18,375.85		
3/31/44	80,277.91		34.35	7.74	165,382.63	30,240.85	115,387.66
3/31/45	57,396.17		34.36	5.90	111,702.69	8,521.98	62,868.76
3/31/46	43,198.15		34.36	6.03	92,746.54	2,947.64	52,536.42
Totals	$213,010.55	$93,646.56	$7,516.07	$8,167.25	$581,731.14	$41,999.48	$520,049.95

together with interest on the above deficiencies and overpayments as provided by law.

[fol. 61] On the basis of the foregoing, it is recommended that an order of judgment be entered as follows:

On July 16, 1958, the court rendered an opinion together with findings of fact holding that the plaintiff was entitled to recover, and entering judgment to that effect. The determination of the amount of recovery was reserved pending further proceedings pursuant to Rule 38(c).

On March 16, 1959, the commissioner of this court filed a memorandum report recommending that, in accordance with the opinion of the court, judgment be entered for the plaintiff in the sum of $520,049.95, after adjustment for interest on the above deficiencies and overpayments as provided by law.

Now, Therefore, It Is Ordered this ..... day of ....., 19...., that judgment be and the same is entered for plaintiff in the sum of five hundred twenty thousand forty-nine dollars and ninety-five cents ($520,049.95), with adjustments for interest as provided by law on the deficiencies and overpayments set out in the stipulation filed March 12, 1959.

Respectfully submitted,

Currell Vance, Commissioner.

[fol. 62]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

BULOVA WATCH COMPANY

v.

THE UNITED STATES

ORDER—March 20, 1959

On July 16, 1958, the court rendered an opinion, together with findings of fact, holding that the plaintiff was entitled

to recover, and entering judgment to that effect. The determination of the amount of recovery was reserved pending further proceedings pursuant to Rule 38(c).

On March 16, 1959, the commissioner of this court filed a memorandum report recommending that, in accordance with the opinion of the court, judgment be entered for the plaintiff in the sum of $520,049.95, after adjustment for interest on the above deficiencies and overpayments as provided by law.

Now, Therefore, It Is Ordered this twentieth day of March, 1959, that judgment be and the same is entered for plaintiff in the sum of five hundred twenty thousand forty-nine dollars and ninety-five cents ($520,049.95), with adjustments for interest as provided by law on the deficiencies and overpayments set out in the stipulation filed March 12, 1959.

By the Court

Marvin Jones, Chief Judge.

[fol. 63]

THE UNITED STATES COURT OF CLAIMS

[Title omitted]

MOTION FOR RELIEF FROM AND INTERPRETATION OF JUDGMENT—Filed January 29, 1960

Comes Now the plaintiff by its counsel, Bernard Weiss, and moves this Honorable Court, pursuant to Rule 54(b), to modify its judgment in the above-entitled case in order to correct error in computation and to determine the correct amount of interest to which plaintiff is entitled under the judgment.

For Cause, it is shown that:

1. On March 20, 1959, judgment was entered in favor of plaintiff in the "sum of $520,049.95, with adjustments for interest as provided by law".

2. On June 1, 1959, a check in the amount of $911,365.52 was received by plaintiff from the United States, represent-

ing principal judgment of $520,049.95 and interest of $391,315.57.

3. Upon receipt of judgment, plaintiff advised the Department of Justice it did not agree to the interest computation and requested further conference with respect thereto.

4. Under date of June 5, 1959, plaintiff was advised by [fol. 64] the Office of the Attorney General that the Office of the Clerk of the Court of Claims had been advised by telephone that there still remained a disagreement in the amount of interest due on the judgment and to see that the records do not show a satisfaction of judgment until the differences are reconciled.

5. Under date of November 6, 1959, plaintiff received additional interest of $225.58 and under date of December 2, 1959, plaintiff received additional interest of $5,684.36.

6. Plaintiff contends the United States owes it net additional interest under the judgment of $51,252.69, which is refused by the United States.

7. In computing the income tax liability for the fiscal year ended March 31, 1942, a deficiency was determined of $32,138.32. Plaintiff contends an error has been made in this computation, which should have reflected an overassessment of $66,707.55, which should be refunded together with interest as provided by law.

Wherefore, plaintiff respectfully prays that this Motion be granted and the case be referred to the trial Commissioner for such facts that are necessary to establish the correct computation of tax and interest.

Bernard Weiss, Counsel for Plaintiff, 136 East 57th Street, New York 22, N. Y.

January 27, 1960

[fol. 65]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER RE MOTION—February 10, 1960

This case comes before the court on plaintiff's motion, filed January 29, 1960, for relief from and interpretation of judgment, together with defendant's objection thereto filed February 8, 1960. Upon consideration thereof,

It Is Ordered this tenth day of February, 1960, that further action with regard to the above motion be and the same is suspended pending compliance by plaintiff with Rule 56(a) of the rules of this court with regard to the relief requested by plaintiff in paragraph 7 of said motion. Said compliance by plaintiff is to be made within 15 days hereof.

By the Court

J. Warren Madden, Acting Chief Judge.

[fol. 66]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

EXCERPTS FROM BRIEF FOR PLAINTIFF IN SUPPORT OF MOTION UNDER RULE 54(b)—Filed February 17, 1960

Preliminary Statement

This brief is being filed under Rule 56(a) of the United States Court of Claims pursuant to an order of the Co... dated February 10, 1960. This brief is due on or be... February 25, 1960.

The motion filed under Rule 54(b) was to (1) correct a mistake in the computation of the income tax liability for the fiscal year ended March 31, 1942 and (2) determine the amount of interest to which plaintiff is entitled under the judgment entered by the Court on March 20, 1959.

• • • • • • •

[fol. 67] Point 2

According to the judgment entered by the Court on March 10, 1959, plaintiff was entitled to a refund of excess profits tax of $211,899.28 for the fiscal year ended March 31, 1942. Of this amount $150,016.21 is attributable to an unused excess profits credit carryback from the fiscal year ended March 31, 1943. The defendant computed interest on this amount from June 14, 1945 to April 25, 1959 to be $124,784.72. Said June 14, 1945 is the date the claim for refund of excess profits tax for the fiscal year ended March 31, 1942 was filed. Defendant contends that such computation is required by Section 3771(e) of the Internal Revenue Code of 1939. Plaintiff admits that if Section 3771(e) is applicable, the defendant's computation is correct. However, plaintiff contends the applicable section is 2411(a) of Title 28 U. S. Code, which provides in part as follows:

> "In any judgment of any Court rendered • • • for any overpayment in respect of *any Internal Revenue tax*, interest shall be allowed at the rate of six per centum per annum upon the amount of the overpayment *from the date of payment or collection thereof* • • • ". (emphasis supplied.)

[fol. 68] There is no provision in said section of the United States Code for restricting interest on refunds attributable to unused excess profits credit carrybacks to commence with the date of the filing of the claim for refund.

Since the current wording of Section 2411(a) of Title 28, U. S. Code, was added by Public Law 72, 81st Congress, 1st Session on May 24, 1949, after Section 3771(e) of the Internal Revenue Code of 1939 was adopted, there must be some distinction as to when the two sections are applicable. Surely, one should not lightly infer Congress is unaware of existing statutes when it adopts new ones. To hold that Section 3771(e) of the 1939 Code always applies would serve to nullify a later adopted statute. The only interpretation that would resolve the apparent conflict and give validity to both Code sections would be that Section 3771(e) of the Internal Revenue Code of 1939 applies to adminis-

trative determinations including those of the Tax Court,[2] whereas Section 2411(a) of Title 28, U. S. Code, applies to judgments after court hearings.

It should be noted that Section 3771(e) starts out with "If the Commissioner determines that any part of an overpayment is attributable * * *" It does not read "If any part of an overpayment is attributable * * *", which is what would be necessary to support the defendant's position in this case. Since the overassessment in excess profits tax in this case was not the result of a determination by the Commissioner, but by the Court over opposition of the Commissioner, Section 2411(a), Title 28, U. S. Code, must apply. Congress undoubtedly intended to penalize defendants, whether the United States or Collector of Internal Revenue, for putting taxpayers to the expense and time of litigating [fol. 69] issues which the courts determine should have been resolved in favor of the taxpayers in the first place.

Plaintiff, in support of its position, cites the decision of this Court in *General Motors Corp., Frigidaire Division*, v. *United States*, 146 F. Supp. 220. Plaintiff has not found any decision setting forth argument in favor of defendant's position.

If Section 2411(a) of Title 28, U. S. Code, is held applicable, plaintiff will be entitled to additional interest of approximately $23,000.

* * * * * * * * *

[fol. 70]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER RE MOTION—April 6, 1960

This case comes before the court on plaintiff's motion, filed January 29, 1960, for relief from and interpretation of the judgment entered for plaintiff on March 20, 1959, together with defendant's opposition thereto. Upon consideration thereof,

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[2] Held to be administrative agency in *Lasky* v. *Commissioner*, 77 S. Ct. 594.

It Is Ordered this sixth day of April, 1960, that plaintiff's motion for relief from and interpretation of the judgment be and the same is granted in that interest on the refund of excess profits taxes for the years ending March 31, 1944, March 31, 1945 and March 31, 1946, be computed from the same dates, respectively, from which dates interest on the deficiency in income taxes for those years, respectively, is computed with said computation to be made pursuant to Rule 38(c), and

It Is Further Ordered that plaintiff's motion be and the same is denied in that no correction be made in the recomputation of plaintiff's income tax liability for the year ended March 31, 1942, and that no correction be made in defendant's computation of interest on the refund of excess [fol. 71] profits tax for the year ended March 31, 1942.

By the Court

Marvin Jones, Chief Judge.

[fol. 72]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER ON MOTION FOR RECONSIDERATION—June 8, 1960

Upon consideration of the motion of the United States for reconsideration and amendment of the court's order of April 6, 1960, which was filed herein May 6, 1960, and of the briefs of the parties with respect thereto; and it appearing to the court that the second paragraph of its order dated April 6, 1960 may be construed, contrary to the court's intention, as applying to cases other than those involving adjustments of a taxpayer's income and excess profits tax liabilities made pursuant to section 3807, Internal Revenue Code of 1939,

Now Therefore It Is Ordered this eighth day of June, 1960, that paragraph 2 of the court's order herein dated April 6, 1960, be and is hereby revised to read as follows:

Plaintiff's motion for relief from and interpretation of the judgment herein is hereby granted in that in-

terest on the deficiency in income taxes for the years ending March 31, 1944, March 31, 1945 and March 31, 1946 shall be computed from the same dates, respectively, from which dates interest on the refund of excess profits taxes for those years, respectively, is computed with said computation to be made pursuant to Rule 38(c), and,

[fol. 73] It Is Further Ordered that in all other respects the court's aforesaid order dated April 6, 1960, be and the same is hereby reconfirmed.

By the Court

Marvin Jones, Chief Judge.

[fol. 74]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

CLERK'S CERTIFICATE

I, Willard L. Hart, Clerk, United States Court of Claims, certify that the foregoing are true transcripts of the portions of the record designated by the parties* as listed in the index herein.

[Seal] In Testimony Whereof I Have hereunto set my hand and affixed the seal of said court at Washington City this 13th day of July, A. D., 1960.

Willard L. Hart, Clerk, United States Court of Claims.

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* With the exception of the order of the court (designated by Defendant) on Defendant's motion for reconsideration of the court's order of June 8, 1960, no such order having been issued as of the date of this certification.

[fol. 75]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1960

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 30, 1960

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 26th, 1960.

Earl Warren, Chief Justice of the United States.

Dated this 30th day of June, 1960.

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 241—October Term, 1960

BULOVA WATCH COMPANY, INC., Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 17, 1960

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 241

BULOVA WATCH COMPANY, INC., PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 15, 1960
CERTIORARI GRANTED OCTOBER 17, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 241

BULOVA WATCH COMPANY, INC., PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 18, 1960

[fol. 1]

IN THE UNITED STATES COURT OF CLAIMS

Docket No. .....

BULOVA WATCH COMPANY, INC., Plaintiff,

v.

UNITED STATES, Defendant.

PETITION—Filed November 23, 1953

Action to recover overpayment of income, declared value excess profits tax and excess profits taxes erroneously and illegally assessed and collected for the fiscal years ended March 31, 1942 to March 31, 1946 inclusive.

1. Jurisdiction rests in this court in accordance with provisions of Title 28, U. S. Code, Section 2501, and is also authorized by Section 3772(a)(1) and (2) of the U. S. Internal Revenue Code.

2. This civil action is to recover Federal declared value excess profits tax and excess profits tax together with interest thereon erroneously and illegally assessed and paid by plaintiff for the fiscal year ended March 31, 1942; to recover Federal income taxes for the fiscal year ended March 31, 1943 together with interest thereon erroneously and illegally assessed and paid; and, in addition, to recover Federal excess profits taxes together with interest thereon previously assessed and paid by plaintiff for the fiscal years [fol. 2] ended March 31, 1944, March 31, 1945 and March 31, 1946. The exact amounts will be shown hereinafter.

3. The plaintiff is a domestic corporation duly organized under the laws of the State of New York in June 1911. It maintains its principal place of business at Bulova Park, Flushing, L. I., N. Y. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, N. Y.

4. The plaintiff maintains its books and records on an accrual basis and files its returns on a fiscal year basis ending March 31st.

5. The plaintiff duly filed its Federal tax returns reporting the following net incomes upon which tax liabilities were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York.

Year Ended	Declared Value Excess Profits Tax		Excess Profits Tax		Income Tax	
	Net Income	Tax	Net Income	Tax	Net Income	Tax
3/31/1942	$1,837,146.52	$ 6,972.67	$1,440,173.85	$ 315,118.87	$1,183,554.98	$366,652.05
3/31/1943	1,080,176.31	none	830,176.31	none	867,676.31	347,070.52
3/31/1944	2,329,572.66	24,500.70	2,060,071.96	1,008,403.24	990,345.43*	396,635.44
3/31/1945	3,968,680.86	81,785.94	3,616,894.92	2,292,416.49	946,966.24	378,786.50
3/31/1946	4,657,218.74	5,508.94	3,976,709.80	1,977,783.60	1,007,716.24**	868,407.02

* amount applicable for 275 days $ 990,345.83
amount applicable for 91 days $ 995,345.83

** amount applicable for 275 days $1,007,716.24
amount applicable for 90 days $4,077,959.80
} Exclusive of $730,449.82 Capital gains

6. Thereafter the plaintiff's tax returns were examined by the Commissioner of Internal Revenue for the fiscal years ended March 31, 1942 through March 31, 1946 and the net incomes and tax liabilities were revised as follows:

[fol. 3]

Year Ended	Report Date of	Declared Value Excess Profits Tax		Excess Profits Tax		Income Tax	
		Net Income	Tax	Net Income	Tax	Net Income	Tax
3/31/42	9/23/43	$1,843,818.17	$ 7,413.00	$1,446,405.17	$ 318,857.67	$1,186,047.50	$367,424.73
3/31/43	5/14/47	1,151,229.33	none	901,229.33	none	938,729.33	375,491.73
3/31/44	5/14/47	2,728,441.32	50,826.03	2,432,615.29	1,395,887.91	938,216.24*	375,783.77
3/31/45	7/13/48	3,924,066.31	78,841.38	3,575,224.93	2,262,414.10	946,966.24	378,786.50
3/31/46	7/27/50	4,685,135.25	7,351.43	4,002,783.82	1,994,579.92	1,007,716.24**	870,850.11

* amount applicable for 275 days $ 938,216.24
amount applicable for 91 days $ 943,216.24

** amount applicable for 275 days $1,007,716.24
amount applicable for 90 days $4,104,033.82
} Exclusive of $730,449.82 Capital Gains

amount applicable for 90 days $4,104,033.82 [Exclusive of $130,445.82 Capital Gains

7. The additional taxes together with interest thereon resulting from the above determinations were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York.

Thereafter the plaintiff filed timely claims for refund of Federal taxes on Forms 843 with the Collector of Internal Revenue for the Third District of New York, as follows:

AMOUNT OF REFUND CLAIMED

Year Ended	Date Claim Filed	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
3/31/1942	6/14/1945	$7,413.00	$ 318,857.67	—
3/31/1943	6/14/1945	—	—	$90,086.29
3/31/1944	6/14/1945	—	1,008,403.24	—
3/31/1945	8/ 9/1948	—	103,754.75	—
3/31/1946	8/ 9/1948	—	92,433.65	—

8. Notice of disallowance of plaintiff's claim for refund for the fiscal year ended March 31, 1945 was mailed to the plaintiff on April 15, 1953 in accordance with provisions of Section 3772(a)-2 of the Internal Revenue Code. No action has been taken on plaintiff's claims for refund for the fiscal years ended March 31, 1942, 1943, 1944 and 1946. Less [fol. 4] than two years have elapsed since the disallowance of the claim for refund for the year ended March 31, 1945 and more than six months have elapsed since the filing of the claims for refund for the years ended March 31, 1942, 1943, 1944 and 1946.

9. The basis stated in the claim for refund of declared value excess profits tax for the fiscal year ended March 31, 1942 and on which plaintiff relies for the allowance of its claim for refund are as follows:

The declared value excess profits net income of $1,843,818.17 for the fiscal year ended March 31, 1942 as determined by the Commissioner of Internal Revenue is overstated by $223,119.13, the correct declared value excess profits net income being $1,620,699.04. The difference of $223,119.13 is arrived at as follows:

a. adjustment of erroneous and excessive reserve for bad debts not taxable as income under Sec. 22 of the Internal Revenue Code	$204,722.75*
b. depreciation of cost of installing Holmes Electric Protective Service over 5-year lease (1/5 of $5,204.92)	1,040.98
c. additional interest allowable for fiscal year ended March 31, 1942, by reason of applying provisions of Section 734 of the Internal Revenue Code to fiscal year ended March 31, 1941	17,355.40
Total adjustments	$223,119.13

* Stated in claim at $144,245.27 but listed in tax return at $204,722.75.

The details pertaining to each of these adjustments are given hereinafter.

[fol. 5] 10. The bases stated in the claim for refund of excess profits tax paid for the fiscal year ended March 31, 1942 and on which plaintiff relies are the same as set forth under paragraph 9 for the purpose of determining declared value excess profits net income and in addition, plaintiff claimed an increased excess profits credit of $82,268.77, arising from adjustments to base period excess profits net income, other than those arising under Section 722 of the Internal Revenue Code, as well as a claim for an unused excess profits credit carryback from the fiscal year ended March 31, 1943 of $367,309.97 exclusive of any additional claimed carryback credit resulting from Section 722 relief. Of $367,309.97, only $315,121.21 is applicable to year ended March 31, 1942.

The additional excess profits credit of $82,268.77 is claimed pursuant to Section 713 of the Internal Revenue Code.

The unused Excess Profits Credit Carryback is claimed pursuant to Section 710(c)(3)(A) and (4) of the Internal Revenue Code, which provides:

"(3) Amount of unused excess profits credit carryback and carryover.

(A) Unused excess profits credit carryback. If for any taxable year beginning after December 31, 1941, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carryback for each of the two preceding taxable years, except that the carryback in the case of the first preceding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the second preceding taxable year computed for such taxable year (i) by determining the unused excess profits credit ad- [fol. 6] justment without regard to such unused excess profits credit, and (ii) without the deduction of the specific exemption provided in subsection (b)(1).

"(4) No carryback to year prior to 1941.

As used in this subsection, the term 'preceding taxable year' and the term 'preceding taxable years' do not include any taxable year beginning prior to January 1, 1941."

11. Plaintiff in addition to reasons set forth under paragraph 9 also claimed that the correction of the reserve for bad debts for the fiscal year ended March 31, 1942 to eliminate erroneous and excessive provisions for bad debts for the base period years commencing prior to January 1, 1940 are excludible from excess profits net income under the provisions of Section 711(a)(1)(E) of the Internal Revenue Code applicable to years involved in these proceedings, which provides:

"(a) The excess profits net income for any taxable year beginning after December 31, 1939 shall be the

normal tax net income as defined in Section 13(a)2, for such year except that the following adjustments shall be made:

"E" Recoveries of bad debts.

There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940;"

12. Plaintiff claimed its excess profits credit for the fiscal year ended March 31, 1942 exclusive of additional credit allowable under provisions of Section 722 of the [fol. 7] Internal Revenue Code was $915,577.83 computed as follows:

	3/31/1937	3/31/1938	3/31/1939	3/31/19
Excess profits net income determined by Commissioner of Internal Revenue	$1,125,914.09	$ 949,465.76	$488,994.00	$ 944,29
Add:				
(a) Excessive charge off of Provision for Bad Debts	126,889.72	205,595.24	(136,931.37)	137,83
(b) Legal Expense on Retirement of Preferred Stock	7,810,07	—	—	—
(c) Installation Cost of Holmes Electric Protective Service erroneously deducted	—	—	—	5,20
Corrected Excess Profit Net Income	$1,260,613.88	$1,155,061.00	$352,062.63	$1,087,33
Average Base Period Net Income				$ 963,76
Excess Profits Credit Allowable (95%)				$ 915,57

13. The bases cited by plaintiff in its claim for refund of income tax for the fiscal year ended March 31, 1943 and on which plaintiff relies for allowance of its claim are—

(a) adjustment of erroneous and excessive reserve for bad debts not taxable as income under Section 22 of the Internal Revenue Code	$224,174.75
(b) depreciation of Holmes Electric Protective Service Equipment	$ 1,040.98
Total decrease in net income	$225,215.73

14. The bases cited by plaintiff in its claims for refund of excess profits tax for the fiscal years ended March 31, [fol. 8] 1944, 1945 and 1946 are (a) additional excess profits credit of $143,490.42, exclusive of any additional credit allowable pursuant to Section 722 of the Internal Revenue Code and (b) reduction in excess profits net income of $1,040.98 for the fiscal year ended March 31, 1944 and $520.49 for the fiscal year ended March 31, 1945, representing depreciation of Holmes Electric Protective Service equipment.

15. In addition, for the fiscal year ended March 31, 1944 the plaintiff claimed an unused excess profits credit carryover from the fiscal year ended March 31, 1943. The unused excess profits credit for the year ended March 31, 1943 to be used as a carryback and carryforward is $367,309.97, as computed in paragraph 26. Of this amount $315,121.21 is applicable to the year ended March 31, 1942 as claimed in paragraph 10, and $52,188.76 is applicable to year ended March 31, 1944, pursuant to Section 710 (c)(3)(B) which provides:

> "(B) Unused excess profits credit carryover. If for any taxable year beginning after December 31, 1939, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carryover for each of the two succeeding taxable years, . . .

(1) For the purposes of the preceding sentence, the unused excess profits credit for any taxable year beginning after December 31, 1941, shall first be reduced by the sum of the adjusted excess profits net income for each of the two preceding taxable years. . . ."

16. The plaintiff claims deduction for bad debts on the so-called reserve for bad debts method. This latter method was adopted during the fiscal year ended March 31, 1935 [fol. 9] with the consent of the Commissioner of Internal Revenue. The amounts charged off on plaintiff's books, the actual bad debts sustained, the amount of bad debts claimed as deductions on tax returns, the deduction for bad debts on the reserve method allowed for tax purposes by the Commissioner of Internal Revenue, the cumulative reserve for bad debts per books and for tax purposes, and the differences in the cumulative Reserve for Bad Debts for the fiscal years ended March 31, 1935 through 1941, are as follows:

3/31/	Provision for Bad Debts per Books	Actual Bad Debts Sustained	Tax Deduction Claimed	Tax Deduction Allowed	Cumulative Reserves for Bad Debts Per Books	Cumulative Reserves for Bad Debts Tax Basis	Differences in Reserves for Bad Debts
1935	$333,716.44	$58,952.87	$333,716.44	$291,135.23	$274,763.57	$232,182.36	$ 42,581
1936	169,023.53	17,223.20	169,023.53	116,103.70	426,563.90	331,062.86	95,501
1937	198,859.94	13,047.00	198,859.94	126,889.72	612,376.84	444,905.58	167,471
1938	236,434.28	44,797.60	236,434.28	205,595.24	804,013.52	605,703.22	198,310
1939	(107,268.73)	50,202.09	(157,470.82)	(136,931.37)	646,542.70	418,569.76	227,972
1940	220,187.54	61,675.87	158,511.67	137,836.23	805,054.37	494,730.12	310,324
1941	(22,571.08)	42,130.13	113,069.64	—0—	740,353.16	452,599.99	287,753
	( ) Debit to Reserve		( ) Income				

17. Plaintiff's sales, trading bad debts and ratio of trading bad debts to sales during fiscal years ended March 31, 1935 through March 31, 1946 were:

	Sales	Trading Bad Debts (net)	Ratio
3/31/1935	$ 5,638,323	$ 58,952	1.046%
3/31/1936	7,742,881	17,223	.222%
3/31/1937	11,006,767	13,047	.119%
3/31/1938	15,555,603	28,988	.186%
3/31/1939	10,704,185	50,202	.469%
3/31/1940	14,579,569	61,676	.423%
3/31/1941	18,032,864	42,130	.234%
3/31/1942	19,389,557	60,477	.312%
3/31/1943	19,980,902	(3,367)	
3/31/1944	28,753,547	(10,880)	
3/31/1945	35,083,345	(8,921)	
3/31/1946	35,896,165	(4,961)	

( ) Recovery of Bad Debts

[fol. 10] 18. Plaintiff's notes and accounts receivable at the close of the fiscal years ended March 31, 1935 through March 31, 1945, the trading bad debts sustained in the respective subsequent years, the ratio of trading bad debts to accounts and notes receivables and the percent of accounts and notes receivable used in computing the reserve for bad debts for tax purposes were:

	Notes and Accounts Receivable	Trading Bad Debts	Ratio of Bad Debts to Receivables	Rate Allowed for Tax Purposes
3/31/1935	$2,329,082	$17,223	.7394%	12½%
3/31/1936	3,490,119	13,047	.3738%	10%
3/31/1937	4,759,016	28,988	.6091%	10%
3/31/1938	6,814,968	50,202	.7366%	10%
3/31/1939	5,445,655	61,676	1.1326%	10%
3/31/1940	6,824,017	42,130	.6174%	10%
3/31/1941	7,954,122	60,477	.7603%	None
3/31/1942	5,395,679	(3,367)	—	—
3/31/1943	2,760,078	(10,880)	—	—
3/31/1944	2,900,565	(8,921)	—	—
3/31/1945	2,543,611	(4,961)	—	—

() Recovery.

19. Plaintiff's reserve for bad debts (tax basis) at April 1, 1936, the beginning of plaintiff's base period, of $331,062.86 was sufficient to absorb all the trading bad debts incurred over the next ten years, which amounted to $228,391. No deductions for additions to the reserve for bad

debts were required or allowable in the years ended March 31, 1937 through March 31, 1940, pursuant to Section 23(k) of Revenue Acts of 1936 and 1938, which provided:

"Section 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions: * * *

(k) Bad Debts.—Debts ascertained to be worthless and charged off within the taxable year (or, in [fol. 11] the discretion of the Commissioner, a reasonable addition to the reserve for bad debts); . . . "

20. Plaintiff incurred legal fees of $7,810.07 to Cravath, deGersdorff, Swaine & Moore in connection with retirement of plaintiff's preferred stock in the fiscal year ended March 31, 1937. Plaintiff erroneously deducted said legal expense in its tax return, which was allowed by Commissioner of Internal Revenue. This item should have been disallowed in accordance with Section 24 of the Revenue Act of 1936.

21. During the fiscal year ended March 31, 1940, plaintiff installed Holmes Electric Protective Service at its principal office, 630 Fifth Avenue, New York 20, N. Y., at a cost of $5,204.92. Plaintiff erroneously deducted such cost in its tax return which deduction was allowed by the Commissioner of Internal Revenue. Plaintiff claims such cost of $5,204.92 should have been capitalized and depreciated pro rata over a five-year lease, pursuant to Section 19.24-2 of Regulations 103, which provides:

"Section 19.24-2. Capital Expenditures.

Amounts paid for increasing the capital value or for making good the depreciation (for which a deduction has been made) of property are not deductible from gross income. * * * ."

22. The allowance of plaintiff's claim set forth in Paragraph 12 entitles Commissioner of Internal Revenue to an offset for additional income and undistributed profits taxes and interest thereon to June 15, 1941, under Section 734 of the Internal Revenue Code. Said interest is an allowable

deduction in computing excess profits net income and declared value excess profits net income for the fiscal year [fol. 12] ended March 31, 1942, pursuant to Section 734(e)(2), which provides:

> "If an adjustment under this section results in a net increase, or more than one adjustment results in an aggregate net increase, the portion of such net increase or aggregate net increase, as the case may be, which represents interest shall be allowed as a deduction in computing net income for the taxable year in which falls the date prescribed for the payment of the tax under this subchapter."

23. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in years ended March 31, 1941 through March 31, 1946.

24. Plaintiff reported as income in its income tax, declared value excess profits tax and excess profits tax returns for year ended March 31, 1942, the amount of $204,722.75, representing "Reduction in Reserve for Doubtful Accounts". This Reduction in the Reserve for Doubtful Accounts comprised the following:

Bad Debts sustained	$ 60,477.48
Additional debit to reserve	164,920.71
	$225,398.19
Less: Amount credited to surplus	20,675.44
Amount included in income	$204,722.75

25. Plaintiff reported as income in its return for the year ended March 31, 1943, the amount of $227,541.66, representing "Reduction in Reserve for Doubtful Ac- [fol. 13] counts". This Reduction in Reserve for Doubtful Accounts comprised the following:

Debit to Reserve for Bad Debts	$246,835.98
Less: Credit to Surplus	22,661.23
	$224,174.75
Add: Recovery for Bad Debts	3,366.91
Amount included in income	$227,541.66

26. Unused excess profits credit carryback and carryover of $367,309.97 from fiscal year ended March 31, 1943 is made up as follows:

Excess Profits Net Income previously determined by Commissioner		$ 901,229.33
Less: "Reduction in Reserve for Doubtful Accounts" non-taxable	$227,541.66	
Depreciation of Holmes Electric Protective Service costs	1,040.98	228,582.64
		$ 672,646.69
Excess Profits Credit claimed—determined in Par. 27		1,039,956.66
Unused Excess Profits Credit Carryback		$ 367,309.97

27. Plaintiff is entitled to an excess profits credit of $1,039,956.66 for the fiscal years ended March 31, 1943 through March 31, 1946 computed as follows:

[fol. 14]

	March 31, 1937	March 31, 1938	March 31, 1939	Ma
Correct Excess Profits Net Income—Par. 12	$1,260,613.86	$1,155,061.00	$352,062.63	$1,087
Aggregate of Base Period Income				3,855
Increase under Section 713 (e)				523
				$4,378
Average Base Period Net Income				$1,094
Excess Profits Credit allowable (95%)				$1,039

28. Wherefore, plaintiff demands judgment against the defendant in the amounts set forth below, together with interest thereon, and costs.

	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
March 31, 1942	$7,413.00	$318,857.67	
March 31, 1943			$91,433.05
March 31, 1944		118,687.65	
March 31, 1945		103,309.82	
March 31, 1946		92,433.52	
	$7,413.00	$633,288.66	$91,433.05

29. Plaintiff is the owner of the claims for refund and no part of said claims has been assigned.

Bernard Weiss, Attorney for Plaintiff, 136 East 57th Street, New York 22, N. Y.

[fol. 15]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ANSWER—Filed March 18, 1954

The defendant, United States, by its attorney, H. Brian Holland, Assistant Attorney General, answering the allegations in plaintiff's petition herein:

I

Denies the allegations of such petition not admitted, qualified or otherwise specifically referred to below.

II

Further answering the petition, defendant—

1. Admits the allegations of Paragraph 1.

2. Admits the allegations of Paragraph 2, except denies that the income taxes, declared value excess profits taxes,

and excess profits taxes were erroneously and illegally assessed and collected.

[fol. 16] 3. Admits the allegations of Paragraphs 3 to 8, inclusive.

9. Denies the allegations of Paragraph 9.

10. Denies the allegations of Paragraph 10.

11. Denies the allegations of Paragraph 11.

12. Denies the allegations of Paragraph 12.

13. Denies the allegations of Paragraph 13.

14. Denies the allegations of Paragraph 14.

15. Denies the allegations of Paragraph 15.

16. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, except admits that plaintiff claims deduction for bad debts on the reserve method which it adopted during the fiscal year ended March 31, 1935, with the consent of the Commissioner of Internal Revenue.

17. Denies the allegations of Paragraph 17 for lack of information sufficient to form a belief as to the truth thereof.

18. Denies the allegations of Paragraph 18 for lack of information sufficient to form a belief as to the truth thereof.

19. Denies the allegations of Paragraph 19 for lack of information sufficient to form a belief as to the truth thereof.

20. Denies the allegations of Paragraph 20.

21. Denies the allegations of Paragraph 21, except admits that the installation cost of $5,204.92 for the Holmes Electric Protective Service was claimed as a deduction by plaintiff and allowed as such by the Commissioner of Internal Revenue.

22. Denies the allegations of Paragraph 22.

[fol. 17] 23. Admits the allegations of Paragraph 23.

24. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, except admits that plaintiff reported as income in its returns for the fiscal year ended March 31, 1942, the amount of $204,722.75 as representing a reduction in reserve for doubtful accounts.

25. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, except admits that plaintiff reported as income in its returns for the fiscal year ended March 31, 1943, the amount of $227,541.66 as representing a reduction in reserve for doubtful accounts.

26. Denies the allegations of Paragraph 26.

27. Denies the allegations of Paragraph 27.

29. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29.

Wherefore, defendant, having fully answered plaintiff's petition, prays that it take nothing in this suit; that plaintiff's petition be dismissed, and that defendant be allowed its costs herein.

H. Brian Holland, Assistant Attorney General.

[fol. 18]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

STIPULATION OF FACTS—Filed May 7, 1956

It is stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts hereinafter stated are true and correct, provided however, that this stipulation shall be without prejudice to the rights of either party to introduce other and further evidence not inconsistent with the facts herein stipulated as true; and

provided further, that said facts are stipulated subject to objections by either party as to materiality or relevancy.

1. Plaintiff is a corporation duly organized under the laws of the State of New York. It maintains its principal place of business at Bulova Park, Flushing, L. I., New York. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, New York.

2. At all times pertinent hereto, the plaintiff maintained its books and records on an accrual basis of accounting and filed its returns on a fiscal year basis ending March 31.

[fol. 19] 3. Plaintiff duly filed its federal tax returns for the fiscal years ending March 31, 1941, through March 31, 1946, inclusive, reporting net incomes on which tax liabilities were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York. True copies of said returns are attached hereto as Exhibits 1, 2, 3, 4, 5 and 6.

4. Plaintiff and its subsidiaries filed timely applications for relief on Form 991, under Section 722 of the Internal Revenue Code of 1939, for the fiscal years ended March 31, 1941, March 31, 1942, and March 31, 1943. Taxpayer claimed that its excess profits tax, computed without the benefits of Section 722 of the Internal Revenue Code as amended, was excessive and discriminatory because the average base period net income credit did not provide a proper or adequate measure of taxpayer's normal earnings under subdivisions 1 to 5, inclusive, of subsection (b) of Section 722. Statutory notices of disallowance of taxpayer's applications for relief under Section 722 of the Internal Revenue Code for the fiscal years ended March 31, 1941, March 31, 1942, and March 31, 1943, were issued on February 2, 1945, a true copy of which is attached hereto as Exhibit 7. No petitions for review of said disallowances were filed with the Tax Court.

5. Plaintiff filed timely applications for relief on Form 991, under Section 722 of the Internal Revenue Code of 1939, for the fiscal years ended March 31, 1944, March 31, 1945, and March 31, 1946. The taxpayer claimed that its

[fol. 20] excess profits tax, computed without the benefits of Section 722 of the Internal Revenue Code, as amended, was excessive and discriminatory because the average base period net income credit did not provide a proper or adequate measure of taxpayer's normal earnings under subdivisions 2, 4 and 5 of subsection (b) of Section 722. By letter dated September 25, 1952, the District Director of Internal Revenue advised taxpayer that its applications for relief filed on Forms 991 had been denied and that taxpayer was not entitled to a constructive average base period net income. Thereafter, the determination of the District Director was approved by the Excess Profits Tax Council. On December 15, 1953, taxpayer was given statutory notice of disallowance of its application for relief made on Form 991 for the fiscal year ended March 31, 1945. On March 12, 1954, taxpayer filed a petition with the Tax Court of the United States for a redetermination of its excess profits tax liability. A true copy of the petition filed with the Tax Court, and exhibits thereto, is attached hereto as Exhibit 8.

6. Plaintiff's tax returns for the years ended March 31, 1941, through March 31, 1946, inclusive, reported net incomes as shown on Exhibit 9.

7. The plaintiff's federal tax returns were examined by the Commissioner of Internal Revenue for the fiscal years ended March 31, 1941, through March 31, 1946, inclusive, and net income tax, declared value excess profits tax and [fol. 21] excess profits tax liabilities were revised in accordance with Exhibit 10. The plaintiff was duly advised of these changes made by the Commissioner.

8. The additional taxes, together with interest thereon, resulting from the determinations referred to in paragraph 7 hereof were duly assessed and paid to the Collector of Internal Revenue for the Third District of New York. Attached hereto as Exhibit 10a are true copies of Form 899, Certificate of Assessments and Payments, covering fiscal years ended March 31, 1942, through March 31, 1946, inclusive.

9. Plaintiff filed claims for refund of federal taxes on Forms 843 with the Collector of Internal Revenue for the

fiscal years ended March 31, 1942, through March 31, 1946, inclusive. True copies of said claims for refund are attached hereto as Exhibits 11, 11a, 12, 13, 14 and 15. The amount of refund claimed on each of these Forms 843 is as follows:

Year Ended	Date Claim Filed	Declared Value Excess Profits Tax	Excess Profits Tax	Income Tax
March 31, 1942	6/14/1945	—	$ 318,857.67	—
March 31, 1942	6/14/1945	$7,413.00	—	—
March 31, 1943	6/14/1945	—	—	$90,086.29
March 31, 1944	6/14/1945	—	1,008,403.24	—
March 31, 1945	8/ 9/1948	—	103,754.75	—
March 31, 1946	8/ 9/1948	—	92,433.65	—

[fol. 22] 10. Attached hereto as Exhibit 16 is a true copy of a letter dated April 6, 1953, addressed to plaintiff by the Assistant District Commissioner of Internal Revenue, advising plaintiff that its claim for refund of $103,754.75 of excess profits tax paid for the fiscal year ended March 31, 1945, would be disallowed. Attached hereto as Exhibit 17 is a true copy of notice of disallowance (Form 6917) dated April 15, 1953, addressed to the plaintiff by the Head of the Collection Division, Internal Revenue Service. Other than the foregoing letters above, the Commissioner has not issued formal notice of rejection in accordance with Section 3772 (a)(2) of the Internal Revenue Code of 1939 for the fiscal years ended March 31, 1942, March 31, 1943, March 31, 1944, and March 31, 1946. Attached hereto as Exhibit 18 is a true copy of a letter (with attached statement) dated December 15, 1953, addressed to plaintiff by the Commissioner of Internal Revenue. The foregoing letters and notices gave plaintiff statutory notice of disallowance with regard to certain portions of its application for relief (Form 991) and claim for refund (Form 843) regarding excess profits tax liability for the fiscal year ended March 31, 1945.

11. Each of plaintiff's claims for refund on Form 843 for fiscal year ended March 31, 1942, claims an increased excess profits tax credit for an unused excess profits credit carryover from the year ended March 31, 1941, and an unused excess profits credit carry-back from March 31, 1943. Plaintiff's claim for refund for fiscal year ended March 31, 1944,

[fol. 23] claims an unused excess profits credit carry-over from the fiscal year ended March 31, 1943. Taxpayer's base period net income as adjusted for excess profits tax purposes is as follows:

Fiscal Year Ended	Average Base Period Net Income	
	Straight Average	Increase in Lowest Year Sec. 713(c)
March 31, 1937	$1,125,914.09	$1,125,914.09
March 31, 1938	949,465.76	949,465.76
March 31, 1939	488,994.00	754,918.94
March 31, 1940	944,295.88	944,295.88
Aggregate	$3,508,669.73	$3,774,594.67
Average	877,167.43	943,647.67
Average Base Period Net Income Used On Returns or Allowed		943,647.67
Increase in Average Earnings under Sec. 713(e)		66,481.21

Taxpayer has availed itself of the benefits of Section 710 (a)(1)(B) of the Internal Revenue Code of 1939 (80% limitation) for the fiscal year ended March 31, 1945, and received a net tax benefit in the amount of $19,374.58.

12. During its base period years, taxable years ended March 31, 1937, through March 31, 1940, inclusive, plaintiff deducted "Bad Debts" on the "Reserve for Bad Debt Method" on its tax returns. The amount of the initial reserve for bad debts of $333,716.44 set up at the end of the [fol. 24] fiscal year ended March 31, 1935, when the taxpayer was granted permission by the Commissioner of Internal Revenue to use the reserve method, gave consideration to the previous four years' experience of the company which disclosed bad debts as follows:

Year Ended	Net Sales	Notes and Accounts Receivable	Bad Debts
March 31, 1930		$4,561,749	
March 31, 1931	$8,114,519.95	4,952,843	$355,379
March 31, 1932	6,327,837.76	3,707,013	508,065
March 31, 1933	3,286,605.19	2,186,789	703,822
March 31, 1934	3,316,864.57	1,848,910	132,061

A copy of letter dated August 22, 1934, which granted plaintiff permission to adopt the reserve method of charging off bad debts, is attached hereto as Exhibit 19.

13. The aforesaid sum of $333,716.44, which was claimed as a deduction from income in its corporation income and excess profits tax return for the fiscal year ended March 31, 1935, represented approximately 13½% of the taxpayer's total accounts and notes receivable at the end of the year, including two items, "Life Insurance surrender value" and "Advances to Broadcasting Station." The revenue agent, upon audit of the aforesaid return, allowed a total deduction from income of $291,135.23 representing 12½% of its trade notes and accounts receivable but excluding therefrom the [fol. 25] two above-stated items. This amount of $291,135.23 included the deduction of $58,952.87 for bad debts actually incurred during the fiscal year ended March 31, 1935. For the fiscal year ended March 31, 1936, the Commissioner of Internal Revenue allowed as a reasonable addition to the reserve for bad debts and as a tax deduction for that year a sum in the amount of 10% of the increase as of March 31, 1936, in the trade notes and accounts receivable over those as of March 31, 1935. On April 1, 1936, at the beginning of plaintiff's base period years, the reserve for bad debts maintained by the plaintiff on its books stood at $426,563.90. On April 1, 1936, the adjusted reserve for bad debts which had previously been allowed for tax purposes by the Commissioner of Internal Revenue was $331,062.86.

14. During the base period years, the adjusted increases in the reserve for bad debts claimed as a tax deduction each year by plaintiff and the adjusted increases in the reserve for bad debts allowed as a tax deduction each year by the Commissioner of Internal Revenue were as follows:

Year Ended	Adjusted Increases in Reserve for Bad Debts Claimed as Tax Deduction	Adjusted Increases in Reserve for Bad Debt Allowed as Tax Deduction
March 31, 1937	$198,859.94	$126,889.72
March 31, 1938	236,434.28	205,595.24
March 31, 1939	(157,470.82)*	(136,931.37)*
March 31, 1940	158,511.67	137,836.23

* ( ) — Adjusted Decrease in Reserve for Bad Debts.

* For the fiscal year ended March 31, 1939, the plaintiff reported as income in its income and excess profits tax

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CH[illegible] ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF I[illegible]

UPPER MANHA[illegible]

TO THE COMMISSIONER:

In re: [illegible] CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

CC:C:REV [illegible]
(Refer to symbols and date of letter requesting this information)

The following is a [illegible] of this office covering the accounts of the taxpayer named above in respect to

INCOME TAXES
(Character of tax)

for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. Taxable Period	2. Last and Year	3. Pa[illegible]	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount	7. Paid Ab. C.R.	8. Adjustment or Overassessment
FYE 3/31/43	1947	S[illegible] 12 0	34902 11 INT 8113 54				1120 - S/411550 272 D 9D RAR INT TO 4/30/47
				8/29/47	43015 65	PD	REC. 5/1/47
				NO OUTSTANDING BALANCE			7658-7/2/47
FYE 3/31/44	1947	6/12 SPL 8-08 0	OVER- 31276 12 INT 5498 32				1120 - S/411509 272 D-9D-RAR
				8/19/47	3700 10	PD	REC. 7/11/47
				8/29/47	12222 67	PD	REC. 5/1/47
				10/15/47	20851 67	ABT	SCH 121268
							CERT O/A- $20851.67-3/31/44
				NO OUTSTANDING BALANCE			7658-7/2/47
FYE 3/31/44	1947	6/12/[illegible] SPL 8-100	EP- 451,390 73 IN-74,284 68				1121 - S/406910 272 D 9D RAR
					45,139 07	PWC	OFFSET
				8/19/47	4,205 07	PD	REC. 7/11/47
				8/29/47	476,330 07	PD	REC. 5/1/47
				8/29/47	1 20	PD	REC. 5/1/47
				NO OUTSTANDING BALANCE			7658-7/2/47

return "Decrease in Reserve for Doubtful Accounts, $157,470.82." The Commissioner of Internal Revenue adjusted the "Decrease in Reserve for Doubtful Accounts" by only increasing net income 10% of the decrease in the accounts and notes receivable, namely, the sum of $136,931.37.

[fol. 26] 15. Plaintiff's average base period net income shown in paragraph 11 hereof and allowed as an excess profits tax credit for fiscal years ended March 31, 1941, through March 31, 1946, inclusive, was computed on the basis of the adjusted increases in the reserve for bad debts allowed as a tax deduction by the Commissioner of Internal Revenue during the base period years.

16. For fiscal years ended March 31, 1935, through March 31, 1941, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provision for bad debts per plaintiff's books, adjusted increases in reserve for bad debts claimed as tax deductions, adjusted increases in reserve for bad debts allowed as tax deductions and the cumulative reserve for bad debts, per books and for tax purposes, are shown on the attached Exhibit 19a.

17. On its income tax return for the fiscal year ended March 31, 1941, plaintiff claimed as an addition to the reserve for bad debts and a tax deduction the sum of $113,069.64. By revenue agent's report dated October 9, 1942, the claimed addition to the reserve for bad debts was reduced to $90,408.41. Thereafter, a post review of the October 9, 1942, revenue agent's report was made whereby it was proposed that the addition to the reserve for bad debt which had been allowed to the extent of $90,408.41 be eliminated *in toto*. Mr. A. Carnow, Assistant Treasurer of Bulova Watch Company, Inc., addressed a letter dated [fol. 27] August 17, 1943, to Mr. J. S. Stern, Internal Revenue Agent, New York, New York, a true copy of which is attached hereto as Exhibit 20. By letter dated November 9, 1943, IT:R:A-4-ZMS, a copy of which is attached and marked Exhibit 20-A, Revenue Agent in Charge was advised to disallow the entire bad debt deduction claimed for the period ended March 31, 1941. By letter dated November 10, 1944, attached to which was a copy of supplemental report dated February 15, 1944, true copies of which are

[redacted]

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
Office of DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

CC:C:REV # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1. Taxable Period	2. Class and Year	3. Acer. No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED: 5. Date or Symbols No.	6. Amount	7. Pay. Ac. Cr.	8. Abatement or Overassessments
FYE		AUGUST	E1				
3/31/44	1944	406910	1,006,403 24	5/17/44			
			INT-2,421 01		244,079 82	PD	REC. 5/14/44
				8/31/44	10,442 00	PD	TR FR 9 PD FYI
				9/26/44	252,100 81	PD	REC. 9/14/44
				12/20/44	252,100 81	PD	REC. 12/15/44
				4/17/45	252,100 81	PD	REC. 3/15/45
							CERT O/A $57515.46
							IT AM # 694
							843 R $1,006,403.24
							F-6/14-M-9/30/45
							POST WAR REFUND TO
							BUR.12/20/45-MAKE
							NO CHANGE IN ACCOUNT
				NO OUTSTANDING BALANCE			MIM.# 5911-$63906.06 1/15/46

attached as Exhibit 21, taxpayer was advised that the addition of $90,408.41 to the reserve for bad debts for which a tax deduction had been sought had been disallowed by the Commissioner of Internal Revenue and that, accordingly, a deficiency would be assessed. In addition for fiscal year ended March 31, 1941, the Commissioner of Internal Revenue increased certain capital stock tax deductions available to the taxpayer in the amount of $2,100.

The net result of the aforementioned adjustments resulted in an additional income tax of $21,194.01 and excess profits tax of $12,333.39 which was duly assessed by the Commissioner of Internal Revenue and duly paid by plaintiff.

18. On April 1, 1941, at the beginning of the period for which claims for refunds were filed on Forms 843 for fiscal years ended March 31, 1942, through March 31, 1946, inclusive, the cumulative reserve for bad debts maintained by the plaintiff on its books was $740,353.16. On April 1, 1941, the cumulative reserve for bad debts which had been previously allowed by the Commissioner of Internal Revenue for tax purposes was $452,599.99.

[fol. 28] 19. On its federal tax returns for fiscal years ended March 31, 1941, through March 31, 1944, inclusive (in Schedule M thereof), plaintiff reported certain accounting adjustments which it made to its reserve for bad debts and earned surplus account during each of these fiscal years.

20. For the fiscal years ended March 31, 1941, through March 31, 1946, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provision for bad debts per plaintiff's books and the cumulative reserve for bad debts per plaintiff's books, are shown on attached Exhibit 22.

21. Plaintiff reported as income in its income and declared value excess profits tax return for the fiscal year ended March 31, 1942, "Reduction in Reserve for Doubtful Accounts, $204,722.75" and paid income and excess profits tax thereon. This sum was made up as follows:

Bad Debts actually sustained	$ 60,477.48
Additional Debit to Reserve	164,920.71
	$225,398.19
Less: Amount credited to Surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for the year ended March 31, 1940	20,675.44
Amount reported in income	$204,722.75

No adjustment was made in the figure of $204,722.75 by the Commissioner of Internal Revenue.

[fol. 29] 22. Plaintiff reported as income in its income and declared value excess profits tax return for the fiscal year ended March 31, 1943, "Reduction in Reserve for Doubtful Accounts, $227,541.66" and paid income tax thereon. This sum was made up as follows:

Debit to Reserve for Bad Debts	$246,835.98
Less: Amount credited to Surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for year ended March 31, 1941	22,661.23
	$224,174.75
Add: Recovery of Bad Debts during year ended March 31, 1943	3,366.91
Amount reported in income	$227,541.66

No adjustment was made in the figure of $227,541.66 by the Commissioner of Internal Revenue.

23. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in the years ended March 31, 1941, through March 31, 1946.

24. In the event the Court determines that plaintiff is entitled to recover any excess profits tax paid for the years

Form 900
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO. INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
CC:C:REV $ 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)
for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/45
(Period covered)

1. Taxable Period	2. List and Year	3. Acct No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount	7. Pay. Ab. Cr.	8. Assessment or Overassessment
FYE							
3/31/44	1944	AUGUST					
		411509	396,635 44	8/17/44			
			DEF-24,500 70				
			INT 302 84				
					31,028 85	PD	REC. 8/14/44
				8/31/44	75,000 00	PD	TR FR 9 CD FFT6/29/44
				9/26/44	105,284 04	PD	REC. 9/14/44
				12/20/44	105,063 03	PD	REC. 12/14/44
				3/28/45	105,063 03	PD	REC. 3/15/45
							CERT O/A $210,851.67
							IT A 121268
							CERT O/A $3950.79
							IT AM # 694
							MII.45911-$3950.79 1/16/46
				NO OUTSTANDING BALANCE			

for 35 page 37

ended March 31, 1942, and March 31, 1944, through March 31, 1946, then additional income taxes may be due for such years.

Bernard Weiss, Attorney for Plaintiff.

Charles K. Rice, Acting Assistant Attorney General, Attorney for Defendant.

H. S. Fessenden, Attorney.
Thomas Hogan, Attorney.

TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE

UP TH MANHATTAN

In re: [redacted]
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

[redacted]
(Refer to symbols and date of letter requesting transcript)

The following is a transcript of the records of this office covering the [redacted] above in respect to [redacted]
(Character of tax)

for the FISCAL YEAR [redacted] 3/31/46
(Period covered)

1. Taxable Period	2. List and Year	3. Acct No or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED			7. Pay. Ab. Cr.	8. Abbreviation or Explanation
					5. Date or Schedule No	6. Amount			
ADDL 1941 DELQ	1945	9/14 523838	2062	50	9/6/45				
		INT	378	72					6/15/42-7/7/45
					10/4/45	2062	50	PD	REC. 9/4/45
					11/8/45	378	72	PD	REC. 9/28/45
					NO OUTSTANDING BALANCE				17-9/14/45
ADDL 1942 DELQ	1945	9/14 523839	2750	00	9/6/45				
		INT	339	96					6/15/43-7/7/45
					10/4/45	2750	00	PD	REC. 9/4/45
					11/8/45	339	96	PD	REC. 9/28/45
									17-9/14/45
					NO OUTSTANDING BALANCE				MIN.5911-1/10/46
ADDL 1943 DELQ	1945	9/14 523840	1557	57	9/6/45				
		INT	99	09					6/15/44-7/7/45
					10/4/45	1557	55	PD	REC. 9/1/45
					11/8/45	99	11	PD	REC. 9/28/45
									17-9/14/45

[redacted]

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

[redacted]

OFFICE OF DIRECTOR OF INTERNAL REVENUE

UPPER MANHATTAN

In re: [redacted] CO., INC.
(Name of taxpayer)

630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

OC:101:NW # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)

for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ASST. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED		PAID, ABATED, OR CREDITED 5. DATE OR SCHEDULE NO.	6. AMOUNT		7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
FYE 3/31/42	1942	AUGUST 410155	IT 366,652	00	8/14/42				
			6,972	67		43,840	24	PD	REC. 8/12/42
			OVER		8/31/42	50,000	00	PD	FR 9 CD PFT 6/15/42
					9/15/42	93,406	18	PD	REC. 9/15/42
					12/16/42	93,406	18	PD	REC. 12/11/42
					3/15/43	92,972	12	PD	REC. 3/12/43
									6% INT pa-$416.82 4/530419/43
									843 R $7413.00 F-6/14-N-6/30/45
					NO OUTSTANDING BALANCE				
FYE 3/31/42	1942	AUGUST 406126	FIF 315,118	87	8/14/42	29,067	52	PD	REC. 8/12/42
					8/31/42	50,000	00	PD	FR 9 PT PFT 6/15/42
					9/15/42	78,779	72	PD	REC. 9/15/42
					12/16/42	78,779	72	PD	REC. 12/11/42
					3/15/43	78,491	01	PD	REC. 3/12/43
									6% INT pa-$276.85 4/530418/43
					NO OUTSTANDING BALANCE				843 R $318,857.67 F-6/15-N-6/30/45

Form 899
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO., INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
CC:C:REV # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1. Taxable Period	2. Ltr and Year	3. Acct No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED 5. Date of Bulletin No.	6. Amount		7. Paid As. Ck.	8. Adjustment of Overassessments
FYE 3/31/42	1943	11/5 529006	EP ✓ 3738	80					1121 - S/406126
			INT 289	01					272 D
									INT TO 9/29/43
					12/1/43	4027	81	PD	REC. 11/15/43
									7658-11/10/43
									843 R $8852.67
									F-6/14-M-8/24/45
					NO OUTSTANDING BALANCE				
FYE 3/31/42	1943	11/5 529007	1T ✓ 772	68					
			INT 59	73					1120 - S/410155
			DVEP ✓ 440	33					272 D
			INT 34	04					
					12/3/43	1306	78	PD	INT TO 9/29/43
									REC. 11/15/43
									7658-11/10/43
									843 R $7413.00
									F-6/14-M-8/31/45
					NO OUTSTANDING BALANCE				

Form 809
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE: UPPER MANHATTAN

In re: BULOVA WATCH CO. INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
CC:C:REV # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1. Taxable Period	2. Levy and Year	3. Acct. No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount	7. Paid As (*)	8. Abatement of Overassessments
FEB 3/31/43	1943	AUGUST 411550	347,070 52	8/17/43	11,885 31	PD	REC. 8/13/43
				8/31/43	75,000 00	PD	FR 9 CD PFT 6/14/43
				10/5/43	86,767 63	PD	RCD. 9/15/43
				12/27/43	86,767 63	PD	RCD. 12/13/43
				3/24/44	86,649 95	PD	RCD. 3/10/44
							843 R $90086.29 F-6/14-M-6/30/45
							CERT O/A $12,145.20- # 694
				NO OUTSTANDING BALANCE			
FEB 3/31/43	1943	NO801462	NON-TAXABLE				
FEB 3/31/43	1944	12/22 529009	5664 30	12/22/44			1120 - 8/411550 272 D
			INT 380 28				INT TO 7/28/44
				1/17/45	6044 58	PD	RCD. 1/12/45
							MIN.$5911-SEE CRIC.- 8/411550/43-1 /10/46
							843 R $90,086.29 F-6/18-M-7/31/45
				NO OUTSTANDING BALANCE			

NO OUTSTANDING BALANCE MIM.5911-1/10/46

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5 , 19 54

Harold B. O'Hearn

(See instructions on reverse side) DISTRICT Director of Internal Revenue.

:P:FW:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 1954

Harold B. Steam

(See instructions on reverse side) DISTRICT Director of Internal Revenue

IR:C:A:RP:FW:CR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54 Harold B. Thomas

U.S. GOVERNMENT PRINTING OFFICE 16-12600-1 (See instructions on reverse side) DISTRICT Director of Internal Revenue.

CM:C:A:4:RP:FW:CR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above with respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

[illegible] FEB [illegible] 1954 Harold B. A. Hearn

[illegible] DISTRICT Director of Internal Revenue

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certification FEBRUARY 5 , 19 54 Harold B. O'Hearn

DISTRICT Director of Internal Revenue

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 1954

Harold B. O'Hearn
Director of Internal Revenue

DISTRICT

TM:C:A:A:RP:FW:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 1954

(See instructions on reverse side) DISTRICT Director of Internal Revenue.

Harold B. Offeard

UM:C:A:A:RP:FW:OR

[fol. 39]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

BULOVA WATCH COMPANY, INC.

v.

THE UNITED STATES

Mr. Bernard Weiss for the plaintiff.

Mr. H. S. Fessenden, with whom was Mr. Assistant Attorney General Charles K. Rice, for the defendant. Mr. James P. Garland was on the brief.

OPINION—July 16, 1958

MADDEN, Judge, delivered the opinion of the court:

The plaintiff sues to recover income and excess profits taxes for its fiscal years 1942 through 1946. The principal asserted basis for recovery has to do with the way in which deductions for bad debts were treated in computing the plaintiff's taxes.

During the years 1931 through 1934 the plaintiff seems to have had a policy of pushing sales regardless of the credit of the purchasers. Some 13½ percent of its accounts proved uncollectible and bad debt deductions from taxable income were taken for them. On March 31, 1935, the plaintiff, under the applicable provision of section 23 (k) of the Revenue Act of 1934, 48 Stat. 680, set up a reserve for bad debts instead of deducting specific bad debts for each year. The initial reserve was $333,716.44 which was approximately 13½ percent of the plaintiff's accounts and notes receivable at the time the reserve was set up. The revenue agent allowed a deduction from income of only $291,135.23, which was 12½ percent of the plaintiff's trade notes and accounts receivable.

In fact, in the fiscal year 1935 during which the $291,135.23 deduction was allowed, the plaintiff's actual bad debt losses [fol. 40] were only $58,952.67. This was because economic conditions were better and a new credit manager was more careful in extending credit.

Under the reserve for bad debts arrangement, if, after the reserve is set up, the taxpayer's accounts receivable at the end of the next fiscal year have increased, it is allowed to add to the reserve a proper percentage of the increase, and take as a bad debt deduction for that year the sum representing that reasonable percentage of the increase. That addition to the bad debt reserve in fiscal year 1936 was $116,103.70, the Commissioner having reduced the allowable percentage from 12½ to 10.

During the fiscal years 1937, 1938, and 1940 the plaintiff's receivables increased each year, and the plaintiff set up on its books a proportionate addition to its reserve for bad debts and was allowed to deduct from its taxable income a somewhat smaller amount, *viz.* 10 percent of the increase, which amount the revenue agent regarded as sufficient. In the fiscal year 1939 the plaintiff's receivables decreased, hence there was a subtraction from its bad debt reserve of a percentage of the decrease, and the amount so subtracted from the reserve was, presumably, added to its taxable income. In all of these years the plaintiff's actual losses from bad debts were nowhere near the amounts added to its bad debt reserve and deducted from its income.

As we shall see, when the Excess Profits Tax statute was passed in 1940, it fixed upon certain years, for this plaintiff the fiscal years 1937 through 1940, as the "base period" years, and the taxpayer's taxable income in those years became retroactively important in computing its excess profits taxes during the war years.

For the fiscal year ending March 31, 1941, the Commissioner of Internal Revenue did not allow any deduction from taxable income nor any addition to the bad debt reserve because the existing unused reserve seemed ample in the light of the plaintiff's actual bad debt experience. The plaintiff, commenting in 1943 on this disallowance, claimed that the reserve was inadequate and should have been increased. The Commissioner took no exception, in any regard here relevant, to the plaintiff's returns for 1942 and 1943.

[fol. 41] In 1945 the plaintiff asserted its present claim that it should not have been allowed to take the unrealistically large bad debt deductions from its income during the years 1935 to 1940. The obvious reason for this change of position was that those years included the base period

years specified in the excess profits tax statute, and the smaller one's taxable income was during those years, the more of his profits during the war years were "excess profits," taxable at high rates. If, therefore, the plaintiff's deductions for bad debts during the base period years had been only the actual amount of its bad debt losses, or the amount which it now says was a reasonable reserve for bad debts, its taxable income during those years would have been larger, and its war time taxable income would not have been so greatly in "excess" of it.

The plaintiff says that the provisions of section 734 of the Internal Revenue Code of 1939 authorize it to reconstruct its base period taxable income. The title of that section is "Adjustment in Case of Position Inconsistent with Prior Income Tax Liability." The section, particularly its subsection (b) (1) (A), says that if an item affecting the determination of the excess profits tax credit is treated in a manner inconsistent with its treatment in the determination of the income tax liability of the taxpayer for a prior taxable year or years, then the income tax treatment for the prior taxable year or years should be reopened and recomputed, though the prior year or years would otherwise be foreclosed from reexamination.

The meaning of the statute is by no means clear. The plaintiff asserts that the Commissioner, in denying the plaintiff the right to make any further addition to its bad debt reserve in the fiscal year 1941 and thereafter, was "inconsistent" with his allowance of the original setting up of the reserve in 1935 and of the additions to it in the succeeding years prior to 1941. The Government says that the disallowance in 1941 was not a rejection of the plan of a reserve for bad debts, but was a recognition of the fact that the reserve was already large enough to cover such losses for the year 1941 and some years thereafter.

In *Leonard Refineries, Inc.*, 11 T. C. 1000, the taxpayer claimed depreciation as a deduction in the excess profits tax [fol. 42] years 1943 and 1944. It asserted that it had taken excessive depreciation in a base period year and thereby used up its depreciation allowance, but that it should not thereby be prevented from taking proper depreciation in the later years. The Tax Court held that the taxpayer had taken excessive depreciation in the base period year; that it had the right to take proper depreciation in the excess

profits tax years; that if it did so, it was required by section 734 to go back and recompute its deductions for depreciation in prior years and pay its taxes for those years according to the recomputation. The result must have been that the taxpayer's base period income was increased, its income in the war years had less "excess" in it, and it got the depreciation deduction in the war years when the tax rates were high.

In *Leonard Refineries* the only "inconsistency" was instigated by the taxpayer itself, admitting and asserting that it had taken an improper deduction in a base period year. The Commissioner was not raising the question and could not have raised it because the prior years were foreclosed by the statute of limitations. The Tax Court's interpretation of section 734 seems to have been that it gave a taxpayer, when it was subjected to the high excess profits tax rates, an opportunity to take a second look at what it had done during the years which were later designated as the base period years, and correct the erroneous computations which it had made during those years, if it would be to its advantage to do so. *American Pad & Textile Co.*, 16 T. C. 1304, is in accord with *Leonard Refineries*. *Carithers-Wallace-Courtenay*, 5 T. C. 942; *Rosemary Manufacturing Co.*, 9 T. C. 851; *The Kawneer Co.*, 13 T. C. 336; and *Guss Blass Co.*, 18 T. C. 261, support the doctrine of *Leonard Refineries*, at least by inference.

The interpretation given to section 734 by the Tax Court in *Leonard Refineries* is justified by the legislative history of the section. That history shows that the section was a relief measure designed to prevent the hardships and inequalities which would otherwise result, if a corporate taxpayer was not permitted, when computing its excess profits credit, to show its "true income" for the base period years and thus be required to pay excess profits tax rates only upon those profits which were, in fact, excessive. [87 Cong. [fol. 43] Record pp. 1372-3, 1377, 77th Cong., 1st Sess.] Section 11 of H. R. 3531, which ultimately became section 734, was explained on the floor of Congress as follows:

> Page 28, section 11, provides for adjustment in case of inconsistent positions. This allows for adjustments during the base period as to income and amounts reported for income taxes. It will be remembered that the present law bases the credit on the amount of the

normal tax net income for the corporation during the base period. It does not provide for the amount of income as reported on the corporation's income-tax report, but it provides for the income during the years of the base period. As an illustration, assume that a corporation reported on its income-tax return for one of the years of the base period $100. Now, it comes along when it wants to show as large an amount as it can during the base period for excess-profits tax purposes, and says, "My income for a certain year during the base period was not $100, as was reported, but it was $175, and, therefore, I want the advantage of $175 in that year of the base period for excess-profits tax purposes." This provision says to the corporation, in effect, "Very well. You may go back and make that adjustment, but you must pay the income tax for the difference between what you reported and what you now say you made during that year of the base period plus interest." [87 Cong. Record pp. 1380-81, 77th Cong., 1st Sess.]

An example cited in the committee reports accompanying H. R. 3531 further supports the view that Congress intended, by the terms of what is now section 734, to give taxpayers this benefit of hindsight in computing their excess profits credit. [H. Rept. 146, pp. 17-18, 77th Cong., 1st Sess.; S. Rept. 75, pp. 17-18, 77th Cong., 1st Sess.]

During the base period years the plaintiff was allowed to take bad debt deductions of 10 percent of its receivables. Its actual bad debt losses ranged from .37 of one percent to 1.13 percent. Under all the facts and circumstances of this case, we conclude that the deductions were grossly excessive and erroneous under the general principles governing the reasonableness of such reserves and additions thereto. *Black Motor Co.*, 41 B. T. A. 300; *Mill Factors Corp.*, 14 T. C. 1366; *Paramount Liquor Co.* v. *Commissioner*, 242 F. 2d 249 (8th Cir. 1957). The plaintiff should have been re- [fol. 44] quired to limit its deductions to its actual losses, or to a reserve amount which bore a reasonable relation to its loss experience. We think section 734 gives the plaintiff the privilege of recomputing its income and income tax for the prior years, and its excess profits tax credit for the excess profits tax years.

The plaintiff claims that the cost of a burglar alarm system installed by it in the year ended March 31, 1940, which was taken as a deduction in that year, should have been capitalized and made the subject of depreciation over a number of years. For the reasons elaborated in connection with the bad debt claim, we think the plaintiff's contention is valid.

The plaintiff makes a similar claim with regard to legal fees paid by it in 1937 in connection with the retirement of its preferred stock. It took a deduction for these fees in the year ended March 31, 1937. It now says that it should have capitalized them. That would have been the proper method of accounting for them. The plaintiff is not asserting a right to do anything with these fees in the excess profits tax years, since they would not be a subject of depreciation. But section 734 (b) (1) seems to be broad enough to allow the recomputation even in this situation.[1] This is an item which affects "the determination of the excess profits credit," and the plaintiff says it should not have been taken as a deduction from income in the base period year, though it was so taken. This constitutes the necessary inconsistency. The Tax Court decision in *The Kawneer Co., supra*, seems to be to that effect. See also the legislative history cited above.

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[1] Sec. 734. (b) *Circumstances of Adjustment.*—

(1) If—

(A) in determining at any time the tax of a taxpayer under this subchapter an item affecting the determination of the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income-tax liability of such taxpayer or a predecessor for a prior taxable year or years, and

(B) the treatment of such item in the prior taxable year or years consistently with the determination under this subchapter would effect an increase or decrease in the amount of the income taxes previously determined for such taxable year or years, and

(C) on the date of such determination of the tax under this subchapter correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by the operation of any law or rule of law (other than section 3761, relating to compromises),

then the correction shall be made by an adjustment under this section. If in a subsequent determination of the tax under this subchapter for such taxable year such inconsistent treatment is not adopted, then the correction shall not be made in connection with such subsequent determination.

Form 886
TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO. INC.
(Name of taxpayer)
630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

CC:C:REN # 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)
for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1 Taxable Period	2 Date and Year	3 Acct No. or Page and Line	4 Amount Assessed		PAID, ABATED, OR CREDITED 5 Date or Schedule No.	6 Amount		7 Paid As Ck	8 Adjustment of Assessments
FYE 3/31/45	1945	AUGUST 406511	2,292,416	49	8/31/45				REC. 8/13/45
					8/31/45	620,000	00	PD	6/15/45 FR 9 PD
					10/16/45	526,208	25	PD	REC. 9/12/45
					12/21/45	578,104	13	PD	REC. 12/14/45
					3/30/46	429,593	99	PD	REC. 3/15/46
					4/4/46	79,604	07	CR	SCH IT AM 694
					4/4/46	57,515	46	CR	SCH IT AM 694
					4/17/46	6,390	60	PD	REC. 4/3/46
			SCB	01	2/16/49				TO 2/581339/49
									CORR. VOU. $ 500.00
					NO OUTSTANDING BALANCE				FR 8/412120/45
FYE 3/31/45	1945	AUGUST 412121	378,786	50	8/20/45	15,294	54	PD	REC. 8/13/45
			DUEP-81,785	94					
					8/31/45	100,000	00	PD	6/15/45 FR 9 CD
					10/16/45	115,143	11	PD	REC. 9/12/45
					12/21/45	115,143	11	PD	REC. 12/15/45
					3/30/46	93,096	33	PD	REC. 3/16/46
					4/4/46	4,950	79	CR	IT AM 694
					4/4/46	4,950	79	ABT	IT AM 694
					4/4/46	12,145	20	CR	IT AM 694
			151	43	4/26/46			PD	8/13/48 TO 4/5308&2/46
								COR. VOU.	$157.43 TO 4/5300/46
					NO OUTSTANDING BALANCE			CERT O/A	$4950.79 IT AM 694

TREASURY DEPARTMENT
Internal Revenue Service

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DISTRICT
OFFICE OF DIRECTOR OF INTERNAL REVENUE

UPPER MANHATTAN

In re: FULOYA MATCH CO., INC.
(Name of taxpayer)

630 FIFTH AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

CC:CIRCV F 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES (Character of tax) for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46 (Period covered)

1 Taxable Period	2 Last and Year	3 Acty No or Page and Line	4 Amount Assessed		PAID, ABATED, OR CREDITED 5 Date or Schedule No			7 Paid Ab. Cr.	8 Adjustment or Overassessment
						6 Amount			
FYE 3/31/45	1948	8/12 SPL 10-040	EP-49601	68					1121 - 8/406511
			INT 8521	98					272 D 9D
									INT TO 4/26/48
					8/19/48	58123	66	PD	FR 9 D PFT-4/28/48
					NO OUTSTANDING BALANCE				
FYE 3/31/45	1948	8/12 SPL 10-060	DVEP- 2006	23					1120 - 8/412121
			INT 344	69					272 D 9D
									INT TO 4/26/48
					8/19/48	2515	63	PD	FR 9 D PFT-4/28/48
			164	71	5/8/50				TO 5/580328/50
					NO OUTSTANDING BALANCE				
FYE 3/31/46	1950	9/19 SPL 14-080	2443	09					1120 - 9/410122
			DVEP-1842	49					272 D 9D RAR
			INT 323	34					INT TO 5/18/49
			INT 428	75	11/15/50	5037	67	CR	SCH B 17
					NO OUTSTANDING BALANCE				1331-5037.67-10/10/52
FYE 3/31/46	1950	9/19 SPL 14-100	EP-16796	32					1121 - 9/406509
			INT 2947	64					272 D 9D RAR
									INT TO 5/18/49
					12/20/50	19743	96	PD	5/18/49 FR 6/500092/50
					NO OUTSTANDING BALANCE				

Form 886
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF DISTRICT DIRECTOR OF INTERNAL REVENUE
UPPER MANHATTAN

In re: BULOVA WATCH CO. INC.
(Name of taxpayer)
630 Fifth AVENUE, NEW YORK
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

CC:C:NEW $ 605100
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to INCOME TAXES
(Character of tax)
for the FISCAL YEARS ENDED 3/31/42 THRU 3/31/46
(Period covered)

1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Symbols No.	6. Amount	7. Pay. Ab. Cr.	8. Adjustment of Overassessment
FYE 3/31/42	1946	9/406509	1,977,783 60	9/30/46			
				9/23/46	1,750,000 00	PD	REC. 6/21/46
				10/9/46	238,891 80	PD	REC. 9/13/46
				12/5/46	19,079 90	PD	REC. 9/16/46
				1/15/47	494,445 90	PD	REC. 12/12/46
				3/15/47	475,366 00	PD	REC. 3/12/47
							843 R $92433.65
				NO OUTSTANDING BALANCE			F-8/9/48-M-7/15/49
FYE 3/31/43	1946	9/410122	868,407 02	9/31/46			
			DEP 5,508 94				
			INT 184 78		18,663 78	PD	REC. 8/15/46
				9/23/46	200,000 00	PD	6/21/46 FR 9 C
				10/9/46	218,478 99	PD	REC. 9/13/46
				12/27/46	218,478 99	PD	REC. 12/12/46
				3/15/47	218,478 98	PD	REC. 3/13/47
				NO OUTSTANDING BALANCE			

[fol. 45] In its return for the fiscal years 1942 and 1943, the plaintiff included in its taxable income amounts which had been charged on its books to its bad debt reserve, but which it in those years transferred on its books, apparently to surplus. The amount so returned as income in those two years was somewhat in excess of the amount actually allowed to the plaintiff as bad debt deductions in prior years. If there were to be no recomputation of income and taxes, the plaintiff would seem to have overstated its income for 1943 by the amount of this excess. Since, under our decision, there will be a recomputation, this problem will be solved in the recomputation.

The plaintiff is entitled to recover, with interest as provided by law. The amount of the judgment will be determined in further proceedings had pursuant to Rule 38 (c).

It is so ordered.

REED, Justice (Ret.), sitting by designation; LARAMORE, Judge; LITTLETON, Judge; and JONES, Chief Judge, concur.

FINDINGS OF FACT

The court, having considered the evidence, a stipulation of facts, the report of Trial Commissioner Currell Vance, and the briefs and arguments of counsel, makes findings of fact as follows:

1. Plaintiff is a corporation duly organized under the laws of the State of New York. It maintains its principal place of business at Bulova Park, Flushing, L. I., N. Y. For the years to which this suit applies, the principal place of business was 630 Fifth Avenue, New York, N. Y.

2. At all times pertinent hereto, the plaintiff maintained its books and records on an accrual basis of accounting and filed its returns on a fiscal-year basis ending March 31.

3. Plaintiff duly filed its Federal income and excess-profits tax returns for the fiscal years ended March 31, 1941 through March 31, 1946, with the collector of internal revenue, third district of New York. Upon examination by the Commissioner of Internal Revenue, the declared value excess-profits net income and tax, the excess-profits net income tax, and the income tax net income and tax were revised to be:

BULOVA WATCH COMPANY, INC.

Year ended	Date of report	Declared value excess profits tax		Excess profits tax		Income tax	
		Net income	Tax	Net income	Tax	Net income	Tax
Mar. 31, 1941	Nov. 10, 1944	$1,462,754.06	None	$713,693.77	$12,333.39	$1,037,754.96	$249,061.19
Mar. 31, 1942	Sept. 23, 1943	1,843,818.17	$7,413.00	1,446,405.17	318,857.67	1,186,047.50	367,424.73
Mar. 31, 1943	May 14, 1947	1,151,229.33	None	901,229.33	None	938,729.33	375,491.73
Mar. 31, 1944	May 14, 1947	2,728,441.32	50,826.03	2,432,615.29	1,395,887.91	938,216.24 943,216.24	[1] 375,783.77
Mar. 31, 1945	July 13, 1948	3,924,066.31	78,841.38	3,575,224.93	2,262,414.10	946,966.24	378,786.50
Mar. 31, 1946	July 27, 1950	4,665,135.25	7,351.43	4,002,783.82	1,994,579.92	1,007,716.24 4,104,033.82	[2] 870,850.11

[1] Amount applicable for 275 days $938,216.24 tax under 1943 law $281,977.56
Amount applicable for 91 days $943,216.24 tax under 1944 law ..... $93,806.21 — $375,783.77

[2] Amount applicable for 275 days $1,007,716.24 tax under 1945 law $303,695.31
Amount applicable for 91 days $4,104,033.82 tax under 1946 law $384,542.34

Exclusive of tax on capital gains $688,237.65
Tax on capital gains of $730,449.82 ..... 182,612.46 — $870,850.11

[fol. 47]

4. The taxes set forth in finding 3 have all been paid to the collector of internal revenue, together with the following interest thereon.

Year ended	Date paid	Amount of interest	Nature of tax
Mar. 31, 1942	Nov. 15, 1943	$289.01	Excess profits tax.
	Nov. 15, 1943	59.73	Income tax.
	Nov. 15, 1943	94.04	Declared value excess profits tax.
Mar. 31, 1943	Jan. 12, 1945	380.28	Income tax.
Mar. 31, 1944	May 1, 1947	8,113.54	Excess profits tax.
	May 1, 1947	5,498.32	Declared value excess profits tax.
	May 1, 1947	74,284.68	Excess profits tax.
	Aug. 14, 1944	2,421.01	Excess profits tax.
	Aug. 14, 1944	28.88	Income tax.
	Sept. 14, 1944	273.96	
Mar. 31, 1945	Apr. 28, 1948	8,521.98	Excess profits tax.
	Apr. 28, 1948	344.69	Declared value excess profits tax.
Mar. 31, 1946	May 18, 1949	323.34	Declared value excess profits tax.
	May 18, 1949	428.75	Income tax.
	May 18, 1949	2,947.64	Excess profits tax.
	Aug. 15, 1946	184.78	Income tax.

5. Plaintiff duly filed claims for refund of Federal taxes on forms 843 with the collector of internal revenue for the fiscal years ended March 31, 1942 through March 31, 1946, inclusive. The amounts of refunds claimed were as follows:

Year ended	Date claim filed	Declared value excess profits tax	Excess profits tax	Income tax
Mar. 31, 1942	June 14, 1945		$318,857.67	
Mar. 31, 1942	June 14, 1945	$7,413.00		
Mar. 31, 1943	June 14, 1945			$90,086.29
Mar. 31, 1944	June 14, 1945		1,008,403.24	
Mar. 31, 1945	Aug. 9, 1948		103,754.75	
Mar. 31, 1946	Aug. 9, 1948		92,433.65	

6. In accordance with Section 3772 (a) (2) of the Internal Revenue Code of 1939, plaintiff received statutory notice its claim for refund of excess-profits tax for the fiscal year ended March 31, 1945 was disallowed. No formal notice of rejection has been issued with regard to the claims for refund for the fiscal years ended March 31, 1942, March 31, 1943, March 31, 1944, and March 31, 1946. More than 6 months have elapsed since plaintiff filed its claims for refund for the said years.

7. Each of plaintiff's claims for refund on Form 843 for the fiscal year ended March 31, 1942, claims an increased excess-profits tax credit for an unused excess-profits credit carry-over from the year ended March 31, 1941, and an un-

[fol. 48]

used excess-profits credit carry-back from March 31, 1943. Plaintiff's claim for refund for the fiscal year ended March 31, 1944, claims an unused excess-profits credit carry-over from the fiscal year ended March 31, 1943.

8. Plaintiff's base-period net income, as determined by the Commission of Internal Revenue, is as follows:

Fiscal year ended	Average base period net income	
	Straight average	Increase in lowest year sec. 713 (c)
Mar. 31, 1937	$1,125,914.09	$1,125,914.09
Mar. 31, 1938	949,465.76	949,465.76
Mar. 31, 1939	488,994.00	754,918.94
Mar. 31, 1940	944,295.88	944,295.88
Aggregate	3,508,669.73	3,774,594.67
Average	877,167.43	943,647.67

Taxpayer has availed itself of the benefits of Section 710 (a) (1) (B) of the Internal Revenue Code of 1939 (80 percent limitation) for the fiscal year ended March 31, 1945, and received a net tax benefit in the amount of $19,374.58.

9. Through the fiscal year ended March 31, 1934, plaintiff charged off bad debts on a "direct charge-off" method. During the fiscal year ended March 31, 1935, plaintiff requested and received permission from the Commissioner of Internal Revenue to charge off bad debts on the "reserve for bad debts" method, which method was used in the years ended March 31, 1935 and March 31, 1936, as well as during the base-period years ended March 31, 1937 through March 31, 1940, inclusive.

10. The amount of initial reserve for bad debts set up at March 31, 1935 was $333,716.44, which represented approximately 13½ percent of the taxpayer's total accounts and notes receivable at the end of the year, including two items, "life insurance surrender value" and "advances to broadcasting station." The 13½ percent reserve figure was adopted by Emanuel Cohan, plaintiff's accountant, by obtaining an average of actual bad debts sustained in the years ended March 31, 1931–March 31, 1934, compared with accounts and notes receivable at the end of each of said years as follows:

[fol. 49]

Year ended	Notes and accounts receivable end of year	Bad debts	Ratio of bad debts to receivables
Mar. 31, 1931	$4,952,943	$355,379	
Mar. 31, 1932	3,707,013	508,055	
Mar. 31, 1933	2,186,789	703,822	
Mar. 31, 1934	1,848,910	132,061	
	12,695,555	1,699,327	13.385%

The revenue agent, upon audit of the tax return for the year ended March 31, 1935, allowed a total deduction from income of $291,135.23, representing 12½ percent of plaintiff's trade notes and accounts receivable, excluding the two aforestated items of "life insurance surrender value" and "advances to broadcasting station." Actual bad debts of $58,952.87 incurred in the year ended March 31, 1935, were not separately deducted but considered included in the amount of $291,135.23.

11. For the fiscal year ended March 31, 1936, the Commissioner of Internal Revenue allowed as a reasonable addition to reserve for bad debts and as a tax deduction an amount equal to 10 percent of the increase in the trade notes and accounts receivable at March 31, 1936, over those of March 31, 1935. On April 1, 1936, the beginning of plaintiff's base-period years, the balance in the reserve for bad debts previously allowed by the Commissioner of Internal Revenue was $331,062.86.

12. For the fiscal years ended March 31, 1935, through March 31, 1941, inclusive, plaintiff's sales, trade notes and accounts receivable, actual net bad debts sustained, provision for bad debts per plaintiff's books, bad debts (reserve method) claimed as tax deductions, bad debts (reserve method) allowed as tax deductions and the cumulative reserve for bad debts per books and for tax purposes were as follows:

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown thereon.

Date of certificate FEBRUARY 5, 19 53 Harold B. Atkins (Director of Internal Revenue)

DISTRICT

CM:C:A:A:RP:FW:OR

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54

(See instructions on reverse side)

Harold B. Steen

DISTRICT Director of Internal Revenue

UM:C:A:RP:F :OR

May 1, 1939. Said lease provided that all fixtures, equipment and appurtenances, including electrical work installed during the term of the lease, were not to be removed by the tenant.

57. While the first year for which plaintiff claimed the right to revise its excess-profits credit was the fiscal year ended March 31, 1941, no claim for refund was or could be filed for that year, since the adjustment in tax due the defendant under Section 734 of the Internal Revenue Code of 1939 was greater than the excess-profits tax previously paid.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is entitled to recover, together with interest as provided by law, and judgment will be entered to that effect. The amount of recovery will be determined in further proceedings pursuant to Rule 38 (c).

[fol. 59]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

[Title omitted]

MEMORANDUM REPORT—Filed March 16, 1959

To the honorable the Chief Judge and Associate Judges of the United States Court of Claims:

On July 16, 1958, the court decided the above plaintiff was entitled to recover, but left the amount of recovery for determination pursuant to Rule 38(c).

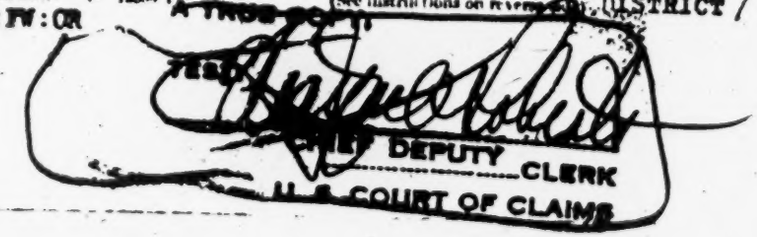
On March 12, 1959, the parties filed a stipulation, signed by the attorneys of record, in which it is stated that on the basis of the decision set out above, the parties have stipulated that judgment may be entered for plaintiff in accordance with the following schedule of deficiencies and overpayments, that is, a net overpayment of $520,049.95, together with interest on the deficiencies and overpayments as provided by law:

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate FEBRUARY 5, 19 54

Harold B. Dream
Director of Internal Revenue.

UM:C:A:A:RP:FW:OR (See instructions on reverse) DISTRICT



[fol. 50]

BULOVA WATCH CO.

Year ended	Sales	Notes and accounts receivable	Actual bad debts sustained	Provision for bad debts per plaintiff's books	Adjusted increase in reserve for bad debts claimed as tax deductions	Adjusted increase in reserve for bad debts allowed as tax deductions	Cumulative reserve for bad debts	
							Per books	Tax basis
Mar. 31, 1935	$5,715,206.16	$2,329,061.53	$58,932.67	$333,716.44	$333,716.44	$291,135.23	$274,763.57	$232,182.36
Mar. 31, 1936	7,800,901.23	3,490,118.67	17,223.20	169,023.53	169,023.53	116,103.70	426,563.90	331,062.86
Mar. 31, 1937	11,006,767.07	4,759,016.04	13,047.00	198,859.94	198,859.94	126,889.72	612,376.84	444,905.88
Mar. 31, 1938	15,555,603.78	6,814,968.40	[2] 44,797.60	236,434.28	236,434.28	205,595.24	804,013.52	606,703.22
Mar. 31, 1939	10,704,184.92	5,445,654.69	50,202.09	[1] (107,368.73)	[1] (157,470.82)	[1] (136,931.37)	646,542.70	418,869.76
Mar. 31, 1940	14,707,895.14	6,824,017.02	61,675.87	220,187.54	158,511.67	137,836.23	805,054.37	494,730.12
Mar. 31, 1941	18,179,206.41	7,954,122.19	42,130.13	155,199.97 [3] (177,770.85)	113,069.64	----------	740,353.16	452,899.99

[1] Plaintiff debited its reserve for bad debts on its books in the amount of $157,470.82 and credited Profit and Loss for that amount which was included in taxable income on its return for the year ended Mar. 31, 1939. The Commissioner of Internal Revenue in determining plaintiff's taxable income for fiscal year Mar. 31, 1939, only increased income by $136,931.37 instead of $157,470.82. On Schedule P of its Federal income tax return for the year ended Mar. 31, 1939, plaintiff charged against surplus $157,470.82 representing a reversal of original debit to reserve for bad debts and then credited surplus for $107,368.73 representing a revised debit to reserve for bad debts, the balance of $50,202.09, the actual bad debts sustained, was written off against Receivables.

[2] For the fiscal year ended Mar. 31, 1941, plaintiff's provision for bad debts was decreased by $177,770.85 and earned surplus was credited by $177,770.85. (See Tax Return, Schedule M.)

[3] Includes nontrading real estate loss of $15,809—S. Lachman special account. (Tr. 70, 71).

[fol. 51]

13. For the fiscal years ended March 31, 1942 through March 31, 1946, inclusive, plaintiff's sales, notes and accounts receivable, actual bad debts sustained, provisions for bad debts per plaintiff's books, and the cumulative reserve for bad debts per plaintiff's books, were as follows:

Year ended	Sales	Notes and accounts receivable	Actual bad debts	Provision for bad debts plaintiff's books	Cumulative reserve for bad debts plaintiff's books
Mar. 31, 1941					$740,353
Mar. 31, 1942	$19,399,557	$5,395,679	$60,477	($164,921)	514,955
Mar. 31, 1943	19,980,902	2,760,078	(3,367)	(246,836)	271,486
Mar. 31, 1944	28,753,347	2,900,565	[1] 10,105	(194,214)	67,166
Mar. 31, 1945	35,083,345	2,543,611	(8,921)		76,087
Mar. 31, 1946	35,996,164	1,637,655	(4,961)		81,048

[1] Includes nontrading real estate loss of $20,985, Gilgro Realty Corp.

14. Plaintiff included in bad debts, and charged the reserve for bad debts with real estate write-downs of $15,809.58 in the fiscal year ended March 31, 1938, for S. Lachman—special account, and $20,985.25 in the year ended March 31, 1944 for Gilgro Realty Corp. investment, two items not strictly bad debts.

15. The ratio of actual bad debts to receivables at the beginning of the year, the 4-year average ratio of bad debts to receivables and the rate used by the Commissioner of Internal Revenue are:

Year ended	Ratio of bad debts to receivables	4-year average ratio of bad debts to receivables	Rate used by commissioner
	Percent	*Percent*	*Percent*
Mar. 31, 1935	3.19	11.05	12.5
Mar. 31, 1936	.74	9.05	10
Mar. 31, 1937	.37	2.25	10
Mar. 31, 1938	.61	.95	10
Mar. 31, 1939	.74	.53	10
Mar. 31, 1940	1.13	.75	10

16. The cumulative reserve for bad debts of $331,063 at March 31, 1936, as determined by the Commissioner of Internal Revenue, was sufficient to meet all net bad debts incurred by plaintiff from April 1, 1936, through March 31, 1946, amounting to $228,391.

17. If no further additions were made to the reserve for bad debts of $331,063 (tax basis) at March 1, 1936, the

[fol. 52]

ratio of the reserve to receivables at the end of each subsequent year for the next ten years, would have been in excess of each year's experience rate of the plaintiff and would have compared to the actual ratio of bad debts to receivables as follows:

Year ended	Current year's ratio of bad debts to receivables	Adjusted ratio of reserve for bad debts to receivables
	Percent	*Percent*
Mar. 31, 1936		9.49
Mar. 31, 1937	.37	6.66
Mar. 31, 1938	.61	4.23
Mar. 31, 1939	.74	4.37
Mar. 31, 1940	1.13	2.58
Mar. 31, 1941	.62	1.69
Mar. 31, 1942	.76	1.36
Mar. 31, 1943	(1)	2.79
Mar. 31, 1944	(1)	3.03
Mar. 31, 1945	(1)	3.81
Mar. 31, 1946	(1)	6.21

[1] Recoveries.

18. If no additions to the reserve for bad debts had been allowed after March 31, 1936, the cumulative tax reserve for bad debts at March 31, 1940, the close of plaintiff's base period, would have been $176,250, which would still have been, percentagewise, more than double the actual experience rate of the plaintiff in the year ended March 31, 1940, and almost 3½ times the average experience rate of the base-period years.

19. Plaintiff's ratios of trading bad debts to sales were 1⅔ percent in 1928, 1 percent in 1929, 2⅓ percent in 1930, 7.1 percent in 1931, 19.2 percent in 1932, 13 percent in 1933, and 1⅓ percent in 1934.

For the fiscal years ended through 1946—

	Percent
Mar. 31, 1935	1.05
Mar. 31, 1936	.22
Mar. 31, 1937	.12
Mar. 31, 1938	.19
Mar. 31, 1939	.47
Mar. 31, 1940	.42
Mar. 31, 1941	.23
Mar. 31, 1942	.31

[fol. 53]

	Percent
Mar. 31, 1943	(1)
Mar. 31, 1944	(1)
Mar. 31, 1945	(1)
Mar. 31, 1946	(1)

[1] Recoveries.

20. Average 3-year ratios of bad debts to sales were:

Year ended	Percent
Mar. 31, 1937	.36
Mar. 31, 1938	.17
Mar. 31, 1939	.25
Mar. 31, 1940	.34
Mar. 31, 1941	.36
Mar. 31, 1942	.32
Mar. 31, 1943	.17
Mar. 31, 1944	.07
Mar. 31, 1945	(1)
Mar. 31, 1946	(1)

[1] Net recoveries of bad debts.

21. If no further additions were made to the reserve for bad debts of $331,063 (tax basis) at March 31, 1936, the reserve for bad debts at the end of each subsequent year for the next 10 years would have been in excess of anticipated bad debts based upon the use of an average 3-year ratio of bad debts to sales.

22. Plaintiff reported as income in its income and declared value excess-profits tax return for the fiscal year ended March 31, 1942, "reduction in reserve for doubtful accounts, $291,722.75" and paid income and excess-profits taxes thereon. The sum was made up as follows:

Bad debts actually sustained	$60,477.48
Additional debit to reserve	164,920.71
	225,398.19
Less: Amount credited to surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for the year ended Mar. 31, 1940	20,675.44
	204,722.75

No adjustment was made in the figure of $204,722.75 by the Commissioner of Internal Revenue.

23. The $204,722.75 included in excess-profits net income in the year ended March 31, 1942, and charged to the reserve

[fol. 54] for bad debts did not reduce the cumulative book reserve below the cumulative taxable reserve.

24. The decrease in book reserve for bad debts in the year ended March 31, 1942, was to adjust the books for the Commissioner of Internal Revenue's disallowance of bad debt deductions in prior years and bring the book reserve more into agreement with the taxable reserve.

25. Plaintiff reported as income in its income and declared value excess-profits tax return for the fiscal year ended March 31, 1943, "reduction in reserve for doubtful accounts, $227,541.66" and paid income tax thereon. This sum was made up as follows:

Debit to reserve for bad debts	$246,835.98
Less: Amount credited to surplus by reason of the revenue agent's decrease in amount credited to the reserve and claimed as a deduction for year ended Mar. 31, 1941	22,661.23
	224,174.75
Add: Recovery for bad debts during year ended March 31, 1943	3,366.91
Amount reported in income	227,541.66

No adjustment was made in the figure of $227,541.66 by the Commissioner of Internal Revenue.

26. The $227,541.66 included in excess-profits net income in the year ended March 31, 1943, and charged to reserve for bad debts, reduced the cumulative book reserve below the cumulative taxable reserve by $120,636.61, if no change is made in the amount of bad debts previously allowed by the Commissioner of Internal Revenue.

27. The decrease in book reserve for bad debts in the year ended March 31, 1943, was to reconcile the books to the tax audits in prior years, and in part to reflect the decrease in outstanding accounts and notes receivable at March 31, 1943, as compared to the previous year.

28. No deduction for bad debts has been allowed to plaintiff by the Commissioner of Internal Revenue in the years ended March 31, 1941 through March 31, 1946.

29. In 1934, Frank B. Sheinberg became credit manager of Bulova Watch Co., Inc. Prior to joining plaintiff, Sheinberg had been credit manager for 10 years of Belding Bros. [fol. 55] & Co., a large wholesale silk manufacturer in New York City.

30. Prior to 1934, plaintiff had practically no credit policy, the sales department practically dominating the credit department. Credit was being extended far in excess of customer's own capital in the business. In early 1930's the credit policy was "thrown to the winds" in order to maintain volume.

31. Upon becoming credit manager, in 1934, Sheinberg put into effect scientific credit policies. He obtained complete and full information from various mercantile agencies of each customer upon which lines of credit were based, and collections were diligently and vigorously followed up.

32. The credit terms of plaintiff during the base-period years and years at issue were sales on—

(1) open account with billing dates in January and July for sales made in the preceding 6 months, with a 2 percent discount allowed if payment was made by the tenth of the month;

(2) ten monthly notes usually beginning 30 days after shipment. No discount was permitted on these sales.

33. "Seasonal dating" credit terms were extended to customers who were financially sound and represented about 75 percent of the plaintiff's accounts.

34. Losses on accounts sold on "seasonal dating" were trivial in the years ended March 31, 1937 through March 31, 1942. Plaintiff had every reasonable assurance these accounts would not go bad.

35. A note or account receivable was determined to be worthless when plaintiff received notice of bankruptcy or assignment, or was called upon to grant long-time extension of payment. The expected salvage value of each account was set up based upon the particular facts in each case.

36. There were only slight variations between estimated salvage value set up for bad accounts and the amounts actually realized.

37. Plaintiff's receivables at the end of any one fiscal year were all collected within a 12-month period unless they went bad and were written off.

38. In the calendar years 1931, 1932, and 1933, economic conditions were chaotic, particularly in the jewelry industry, [fol. 56] a luxury industry, and a great many of plaintiff's accounts receivable from retail jewelers practically evaporated. A great many jewelers had to go through bankruptcy, reorganizations and settlements.

39. Beginning in 1934, plaintiff's business was transacted with economically stronger retailers, those who had weathered the depression without bankruptcy or settlement, and those who had reorganized, and as a result were in sound financial condition.

40. Beginning in 1934, economic conditions improved greatly in the United States. Business failures decreased sharply after the period 1930-1933, particularly in the jewelry industry.

41. The average of financial embarrassments (bankruptcies, receiverships and assignments for the benefit of creditors) in the jewelry industry in 1930-1933 was 959 per annum with liabilities of $24,221,000. In 1934 and 1935, jewelry embarrassments were 294, with liabilities of $4,989,143, and 149 with liabilities of $2,904,958, respectively. The average of financial embarrassments in the jewelry industry during the calendar years 1936-1939 was 206 per annum with liabilities of $2,845,000.

42. Total commercial failures averaged 2,215 per month in the calendar years 1930-1933, inclusive, with average liabilities of $58,314,000 compared with average monthly fail-

ures of 903 for $16,690,000 in the base-period years 1936-1939.

43. The United States Department of Commerce Index of Retail Trade rose from 63.1 in 1933 to 98.9 in 1936, and averaged 103.9 in the base-period years.

44. The sharp decrease in bad debts, from the years ended March 31, 1931 through March 31, 1934, to years ended March 31, 1936 through March 31, 1946, was due to improved economic conditions, sales to the economically stronger accounts, and the adoption of new scientific credit controls.

45. Emanuel Cohan, plaintiff's accountant, computed the amount added to the reserve for bad debts in the year ended March 31, 1936, and subsequent years, by using the last known rate allowed by the revenue agent upon examination of prior years' returns.

46. In determining the amount of the reserve for bad debts no consideration was given to the currentness or age [fol. 57] of the receivables, the changing bad debt experience of the plaintiff during the fiscal years ended March 31, 1937, through March 31, 1940, changed economic conditions, or credit policy changes.

47. Plaintiff's account was confused in his treatment of bad debts and reserves, and in some years actually reported as income the bad debts sustained.

48. The reduced amounts allowed by the Commissioner of Internal Revenue as deductions for bad debts (reserve basis) were much in excess of actual bad debts sustained.

49. The percent of receivables used by the Commissioner of Internal Revenue in determining allowable deductions for additions to reserve for bad debts in the base period ranged from 9 to 27 times actual experience of plaintiff.

50. On November 9, 1943, the Commissioner of Internal Revenue addressed a letter to the internal revenue agent in charge, New York, N. Y., relating to the March 31, 1941 return of plaintiff, wherein he stated in part that "the taxpayer has been permitted to claim excessive reserves for bad debts in the past • • •."

51. On November 10, 1944, the Commissioner of Internal Revenue addressed a letter to plaintiff relating to the March 31, 1941 return, wherein he stated in part "the average bad debts charged off for the past 5 years of $42,370.64 amount to about 7/8 percent of the average accounts receivable of $5,466,754.98. Applying this percentage to the accounts receivable at the end of the year [March 31, 1941] of $7,954,122.19, the result will be about $69,600 to be compared with the $500,000 already in the reserve * * * ."

52. Plaintiff was also advised in said letter of November 10, 1944, that the amount of bad debt deductions allowed in prior years (years ended March 31, 1937, et seq.) were not reasonable additions to the reserve for bad debts and it was never intended that a taxpayer who deducts an addition to a reserve for bad debts should obtain greater deductions than a taxpayer who deducts specific bad debts.

53. Based on economic conditions existing at March 31, 1937, and credit policies in effect, the anticipated bad debts would not be in excess of 2 percent of the receivables. The reserves for bad debts during the base period years 1937 to 1940 were excessive and erroneous under all the [fol. 58] facts and circumstances then known or reasonably to be anticipated. A reasonable reserve during that period would have been 2 percent of the receivables.

54. Plaintiff retired its preferred stock in September 1936. In connection with such retirement, plaintiff incurred and paid $3,750 to Frederick William Greenfield & Co., for special accounting services, and $7,810.07 to Cravath, Swaine & Moore for legal expenses. Both of these items were deducted in the tax return for the year ended March 31, 1937, as legal and accounting expense. The Commissioner of Internal Revenue disallowed $3,750 as a deduction but allowed the balance of $7,810.07.

55. During the fiscal year ended March 31, 1940, plaintiff installed Holmes Electric Protective Service at its office at 630 Fifth Avenue, New York, N. Y., at a cost of $5,204.92, which amount was allowed as a deduction on plaintiff's tax return for said year.

56. Plaintiff's lease on its offices at 630 Fifth Avenue, New York, N. Y., was for a period of 10 years beginning

[fol. 60]

Year	*Deficiency*	*Overpayment*					
	Income Tax	Income Tax	D.V.E.P.	Interest	Excess Profits Tax	Interest	Net Amount
3/31/42	$ 32,138.32		$7,413.00	$ 34.04	$211,899.28	$ 289.01	$187,497.01
3/31/43		$93,646.56		8,113.54			101,760.10
					183,758.48		
		Less: Post-War Credit Adjustment –			18,375.85		
3/31/44	80,277.91		34.35	7.74	165,382.63	30,240.85	115,387.66
3/31/45	57,396.17		34.36	5.90	111,702.69	8,521.98	62,868.76
3/31/46.	43,198.15		34.36	6.03	92,746.54	2,947.64	52,536.42
Totals	$213,010.55	$93,646.56	$7,516.07	$8,167.25	$581,731.14	$41,999.48	$520,049.95

together with interest on the above deficiencies and overpayments as provided by law.

[fol. 61] On the basis of the foregoing, it is recommended that an order of judgment be entered as follows:

On July 16, 1958, the court rendered an opinion together with findings of fact holding that the plaintiff was entitled to recover, and entering judgment to that effect. The determination of the amount of recovery was reserved pending further proceedings pursuant to Rule 38(c).

On March 16, 1959, the commissioner of this court filed a memorandum report recommending that, in accordance with the opinion of the court, judgment be entered for the plaintiff in the sum of $520,049.95, after adjustment for interest on the above deficiencies and overpayments as provided by law.

Now, Therefore, It Is Ordered this ..... day of ....., 19...., that judgment be and the same is entered for plaintiff in the sum of five hundred twenty thousand forty-nine dollars and ninety-five cents ($520,049.95), with adjustments for interest as provided by law on the deficiencies and overpayments set out in the stipulation filed March 12, 1959.

Respectfully submitted,

Currell Vance, Commissioner.

[fol. 62]

IN THE UNITED STATES COURT OF CLAIMS

No. 629-53

BULOVA WATCH COMPANY

v.

THE UNITED STATES

ORDER—March 20, 1959

On July 16, 1958, the court rendered an opinion, together with findings of fact, holding that the plaintiff was entitled

to recover, and entering judgment to that effect. The determination of the amount of recovery was reserved pending further proceedings pursuant to Rule 38(c).

On March 16, 1959, the commissioner of this court filed a memorandum report recommending that, in accordance with the opinion of the court, judgment be entered for the plaintiff in the sum of $520,049.95, after adjustment for interest on the above deficiencies and overpayments as provided by law.

Now, Therefore, It Is Ordered this twentieth day of March, 1959, that judgment be and the same is entered for plaintiff in the sum of five hundred twenty thousand forty-nine dollars and ninety-five cents ($520,049.95), with adjustments for interest as provided by law on the deficiencies and overpayments set out in the stipulation filed March 12, 1959.

By the Court

Marvin Jones, Chief Judge.

[fol. 63]

THE UNITED STATES COURT OF CLAIMS

[Title omitted]

MOTION FOR RELIEF FROM AND INTERPRETATION OF JUDGMENT—Filed January 29, 1960

Comes Now the plaintiff by its counsel, Bernard Weiss, and moves this Honorable Court, pursuant to Rule 54(b), to modify its judgment in the above-entitled case in order to correct error in computation and to determine the correct amount of interest to which plaintiff is entitled under the judgment.

For Cause, it is shown that:

1. On March 20, 1959, judgment was entered in favor of plaintiff in the "sum of $520,049.95, with adjustments for interest as provided by law".

2. On June 1, 1959, a check in the amount of $911,365.52 was received by plaintiff from the United States, represent-

ing principal judgment of $520,049.95 and interest of $391,315.57.

3. Upon receipt of judgment, plaintiff advised the Department of Justice it did not agree to the interest computation and requested further conference with respect thereto.

4. Under date of June 5, 1959, plaintiff was advised by [fol. 64] the Office of the Attorney General that the Office of the Clerk of the Court of Claims had been advised by telephone that there still remained a disagreement in the amount of interest due on the judgment and to see that the records do not show a satisfaction of judgment until the differences are reconciled.

5. Under date of November 6, 1959, plaintiff received additional interest of $225.58 and under date of December 2, 1959, plaintiff received additional interest of $5,684.36.

6. Plaintiff contends the United States owes it net additional interest under the judgment of $51,252.69, which is refused by the United States.

7. In computing the income tax liability for the fiscal year ended March 31, 1942, a deficiency was determined of $32,138.32. Plaintiff contends an error has been made in this computation, which should have reflected an overassessment of $66,707.55, which should be refunded together with interest as provided by law.

Wherefore, plaintiff respectfully prays that this Motion be granted and the case be referred to the trial Commissioner for such facts that are necessary to establish the correct computation of tax and interest.

Bernard Weiss, Counsel for Plaintiff, 136 East 57th Street, New York 22, N. Y.

January 27, 1960

[fol. 65]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER RE MOTION—February 10, 1960

This case comes before the court on plaintiff's motion, filed January 29, 1960, for relief from and interpretation of judgment, together with defendant's objection thereto filed February 8, 1960. Upon consideration thereof,

It Is Ordered this tenth day of February, 1960, that further action with regard to the above motion be and the same is suspended pending compliance by plaintiff with Rule 56(a) of the rules of this court with regard to the relief requested by plaintiff in paragraph 7 of said motion. Said compliance by plaintiff is to be made within 15 days hereof.

By the Court

J. Warren Madden, Acting Chief Judge.

[fol. 66]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

EXCERPTS FROM BRIEF FOR PLAINTIFF IN SUPPORT OF MOTION UNDER RULE 54(b)—Filed February 17, 1960

Preliminary Statement

This brief is being filed under Rule 56(a) of the United States Court of Claims pursuant to an order of the Court dated February 10, 1960. This brief is due on or before February 25, 1960.

The motion filed under Rule 54(b) was to (1) correct a mistake in the computation of the income tax liability for the fiscal year ended March 31, 1942 and (2) determine the amount of interest to which plaintiff is entitled under the judgment entered by the Court on March 20, 1959.

* * * * * * *

[fol. 67] Point 2

According to the judgment entered by the Court on March 10, 1959, plaintiff was entitled to a refund of excess profits tax of $211,899.28 for the fiscal year ended March 31, 1942. Of this amount $150,016.21 is attributable to an unused excess profits credit carryback from the fiscal year ended March 31, 1943. The defendant computed interest on this amount from June 14, 1945 to April 25, 1959 to be $124,-784.72. Said June 14, 1945 is the date the claim for refund of excess profits tax for the fiscal year ended March 31, 1942 was filed. Defendant contends that such computation is required by Section 3771(e) of the Internal Revenue Code of 1939. Plaintiff admits that if Section 3771(e) is applicable, the defendant's computation is correct. However, plaintiff contends the applicable section is 2411(a) of Title 28 U. S. Code, which provides in part as follows:

> "In any judgment of any Court rendered • • • for any overpayment in respect of *any Internal Revenue tax*, interest shall be allowed at the rate of six per centum per annum upon the amount of the overpayment *from the date of payment or collection thereof* • • • ". (emphasis supplied.)

[fol. 68] There is no provision in said section of the United States Code for restricting interest on refunds attributable to unused excess profits credit carrybacks to commence with the date of the filing of the claim for refund.

Since the current wording of Section 2411(a) of Title 28, U. S. Code, was added by Public Law 72, 81st Congress, 1st Session on May 24, 1949, after Section 3771(e) of the Internal Revenue Code of 1939 was adopted, there must be some distinction as to when the two sections are applicable. Surely, one should not lightly infer Congress is unaware of existing statutes when it adopts new ones. To hold that Section 3771(e) of the 1939 Code always applies would serve to nullify a later adopted statute. The only interpretation that would resolve the apparent conflict and give validity to both Code sections would be that Section 3771(e) of the Internal Revenue Code of 1939 applies to adminis-

trative determinations including those of the Tax Court,[2] whereas Section 2411(a) of Title 28, U. S. Code, applies to judgments after court hearings.

It should be noted that Section 3771(a) starts out with "If the Commissioner determines that any part of an overpayment is attributable * * *" It does not read "If any part of an overpayment is attributable * * *", which is what would be necessary to support the defendant's position in this case. Since the overassessment in excess profits tax in this case was not the result of a determination by the Commissioner, but by the Court over opposition of the Commissioner, Section 2411(a), Title 28, U. S. Code, must apply. Congress undoubtedly intended to penalize defendants, whether the United States or Collector of Internal Revenue, for putting taxpayers to the expense and time of litigating [fol. 69] issues which the courts determine should have been resolved in favor of the taxpayers in the first place.

Plaintiff, in support of its position, cites the decision of this Court in *General Motors Corp., Frigidaire Division,* v. *United States,* 146 F. Supp. 220. Plaintiff has not found any decision setting forth argument in favor of defendant's position.

If Section 2411(a) of Title 28, U. S. Code, is held applicable, plaintiff will be entitled to additional interest of approximately $23,000.

* * * * * * *

[fol. 70]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER RE MOTION—April 6, 1960

This case comes before the court on plaintiff's motion, filed January 29, 1960, for relief from and interpretation of the judgment entered for plaintiff on March 20, 1959, together with defendant's opposition thereto. Upon consideration thereof,

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[2] Held to be administrative agency in *Lasky* v. *Commissioner,* 77 S. Ct. 594.

It Is Ordered this sixth day of April, 1960, that plaintiff's motion for relief from and interpretation of the judgment be and the same is granted in that interest on the refund of excess profits taxes for the years ending March 31, 1944, March 31, 1945 and March 31, 1946, be computed from the same dates, respectively, from which dates interest on the deficiency in income taxes for those years, respectively, is computed with said computation to be made pursuant to Rule 38(c), and

It Is Further Ordered that plaintiff's motion be and the same is denied in that no correction be made in the recomputation of plaintiff's income tax liability for the year ended March 31, 1942, and that no correction be made in defendant's computation of interest on the refund of excess [fol. 71] profits tax for the year ended March 31, 1942.

By the Court

Marvin Jones, Chief Judge.

[fol. 72]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER ON MOTION FOR RECONSIDERATION—June 8, 1960

Upon consideration of the motion of the United States for reconsideration and amendment of the court's order of April 6, 1960, which was filed herein May 6, 1960, and of the briefs of the parties with respect thereto; and it appearing to the court that the second paragraph of its order dated April 6, 1960 may be construed, contrary to the court's intention, as applying to cases other than those involving adjustments of a taxpayer's income and excess profits tax liabilities made pursuant to section 3807, Internal Revenue Code of 1939,

Now Therefore It Is Ordered this eighth day of June, 1960, that paragraph 2 of the court's order herein dated April 6, 1960, be and is hereby revised to read as follows:

Plaintiff's motion for relief from and interpretation of the judgment herein is hereby granted in that in-

terest on the deficiency in income taxes for the years ending March 31, 1944, March 31, 1945 and March 31, 1946 shall be computed from the same dates, respectively, from which dates interest on the refund of excess profits taxes for those years, respectively, is computed with said computation to be made pursuant to Rule 38(c), and,

[fol. 73] It Is Further Ordered that in all other respects the court's aforesaid order dated April 6, 1960, be and the same is hereby reconfirmed.

By the Court

Marvin Jones, Chief Judge.

[fol. 74]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

CLERK'S CERTIFICATE

I, Willard L. Hart, Clerk, United States Court of Claims, certify that the foregoing are true transcripts of the portions of the record designated by the parties* as listed in the index herein.

[Seal] In Testimony Whereof I Have hereunto set my hand and affixed the seal of said court at Washington City this 13th day of July, A. D., 1960.

Willard L. Hart, Clerk, United States Court of Claims.

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* With the exception of the order of the court (designated by Defendant) on Defendant's motion for reconsideration of the court's order of June 8, 1960, no such order having been issued as of the date of this certification.

[fol. 75]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1960

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 30, 1960

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 26th, 1960.

Earl Warren, Chief Justice of the United States.

Dated this 30th day of June, 1960.

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 241—October Term, 1960

BULOVA WATCH COMPANY, INC., Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 17, 1960

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.